122-256

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~928.~~ 576 295

ROBERT IRVINE AND CHARLES L. BEISSNER,
APPELLANTS,

vs.

THE STEAMSHIP "HESPER" AND CARGO; GEORGE HORSELEY, CLAIMANT, (AND GEORGE BALL AND GEORGE SEALY, SURETIES.)

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED SEPTEMBER 13, 1884.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

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1 Circuit Court of the United States, Eastern District of Texas.
Holding Sessions at Galveston.

ROBERT IRVINE & CHARLES L. BEISSNER, Libellants, Appellants, *against* THE STEAMSHIP "HESPER" & CARGO. } No. 1248. On Appeal.

Be it remembered that in the above-entitled and numbered cause, appealed from the district court of the United States for the eastern district of Texas, holding sessions at Galveston, and in which a final decree was made and entered in said circuit court on the 13th day of November, A. D. 1883, Hon. Don A. Pardee, U. S. circuit judge, presiding, the following proceedings were had, to wit:

Transcript on Appeal from the District Court. Filed June 7th, 1883.

District Court of the United States, Eastern District of Texas, at Galveston. In Admiralty.

IRVINE & BEISSNER *v.* STEAMSHIP "HESPER" & CARGO. } No. 551.

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District Court of the United States, Eastern District of Texas, at Galveston. In Admiralty.

ROBERT IRVINE & CHARLES L. BEISSNER, Libellants,
v.
STEAMSHIP HESPER & CARGO. } No. 551.

Be it remembered that in the above-entitled and numbered cause, begun in said court, upon a libel filed by the said libellants against the said Steamship "Hesper" and cargo, on the 22d day of January, A. D. 1883, and in which said cause a final decree was made and entered in said court on the 21st day of April, A. D. 1883, Hon. Amos Morrill, judge, presiding, the following proceedings were had, to wit:

Warrant of Seizure, Page 1. *Issued January* 22*d*, 1883.

District Court of the United States, Eastern District of Texas.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

Whereas a libel has been filed in the district court of the
4 United States for the eastern district of Texas on behalf of Robert Irvine and Charles L. Beissner against steamship "Hesper," her tackle, apparel, engines, machinery, and furniture, and cargo, for reasons in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship "Hesper," her tackle, apparel, engines, machinery and furniture, and cargo, may be cited in general and special to answer the premises, and that all due proceedings being had that the said steamship "Hesper," her tackle, apparel, engines, machinery, and furniture, and cargo, may, for the causes in the said libel mentioned, be condemned and the proceeds thereof distributed:

You are, therefore, hereby commanded to attach the said steamship "Hesper," her tackle, apparel, engine, machinery and furniture, and cargo, and to detain the same in your custody until the further order of the court respecting the same.

Herein fail not; and of this writ make due return forthwith, and what you shall have done in the premises.

Witness the Honorable Amos Morrill, judge of said court,
5 and the seal thereof, at Galveston, in said district, this 22d day of January, A. D. 1883, and of American Independence the 107th year.

[SEAL.] GEO. C. RIVES,
Clerk U. S. District Court, Eastern District of Texas, at Galveston.

Marshal's Return.

Received this writ on the 22d day of January, 1883, and executed the same on the 23d day of January, 1883, by attaching the steamship "Hesper," her tackle, apparel, engines, machinery, furniture, and cargo, at the outer roadstead port of Galveston, Texas.

WM. J. PHILLIPS,
U. S. Marshal,
By W. T. CLAYTON,
Deputy.

Endorsements: "A. D. No. 551. Irvine & Beissner *v.* Steamship 'Hesper.' Warrant of seizure. Issued 22d day of January, A. D. 1883. Geo. C. Rives, clerk. Returned and filed Jan'y 23d, 1883. Geo. C. Rives, cl'k, by C. Dart, dep't."

Monition, Page 3. *Issued January* 23*d*, 1883.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

In U. S. District Court, at Galveston.

IRVINE & BEISSNER
v.
STEAMSHIP "HESPER" & CARGO. } No. 551.

The President of the United States of America to the marshal
6 of the eastern district of Texas, Greeting:

Whereas return having been made that the warrant of seizure issued in the above cause on the 22d day of January, A. D. 1883, has been duly executed, and that the property therein mentioned is now in custody of the marshal, you are, therefore, hereby commanded to give notice to all persons claiming the said steamship "Hesper," her tackle, apparel, engines, machinery, and furniture, and cargo, or knowing or having anything to say why the same should not be condemned and forfeited, and the proceeds thereof distributed according to the prayer of the libel; that they be and appear before the said court, to be held in and for the eastern district of Texas, at the United States court-rooms in the city of Galveston, on the 10th day of February, A. D. 1883, at 10 o'clock on the

forenoon of that day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this.

Witness the Honorable Amos Morrill, judge of said court, and the seal thereof, at Galveston, in said district, this 23d day of
7 January, A. D. 1883, and of American Independence the 107th year.

[SEAL.] GEO. C. RIVES,
Clerk U. S. District Court, Eastern District of Texas, at Galveston,
By C. DART, *Dep't.*

Marshal's Return.

Received this writ on the 23d day of Jan'y, 1883, and I executed the same by giving notice to all persons claiming the within-named steamship "Hesper" & cargo. First publication made on the 26th day of January, 1883.

WM. J. PHILLIPS,
U. S. Marshal,
By W. T. CLAYTON,
Deputy.

Endorsements: "A. D. No. 551. Irvine & Beissner *v.* Steamship Hesper & cargo. Monition. Issued 23d day of January, A. D. 1883. Geo. C. Rives, clerk, by C. Dart, dep't. Returned and filed Feb'y 14th, 1883. Geo. C. Rives, cl'k, by C. Dart, dep't."

Libellants' Stipulations for Costs, Page 5. Filed January 22d, 1883.

Bond of Libellant.

District Court of the United States of America, Eastern District of Texas. In Admiralty.

IRVINE & BEISSNER
vs.
STEAMSHIP "HESPER." } No. ——.

Whereas a libel was filed in said cause by Robert Irvine
8 and Charles L. Beissner, on the 22d day of January, 1883, against said Steamship Hesper and cargo, for the reasons and causes in said libel mentioned, — as sureties, and the said libellants consenting and agreeing that, in case of default or contumacy on the part of said libellants and sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty ($250.00) dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned, are bound in the sum of two hundred and fifty ($250.00) dollars, conditioned that the libellants above named shall

pay all such costs as shall be awarded against them by this court, or on appeal by the appellate court.

ROBERT IRVINE. [SEAL.]
C. L. BEISSNER. [SEAL.]
T. H. SWEENEY. [SEAL.]
W. M. ROST. [SEAL.]

Taken and acknowledged before me, this 22d day of January, A. D. 1883.

GEO. C. RIVES,
Commissioner U. S. Circ't Court, E. D. T.

EASTERN DISTRICT OF TEXAS, *ss:*

T. H. Sweeney, party of the stipulation above, being duly
9 sworn, deposes and says: That he is worth the sum of two hundred and fifty ($250.00) dollars, exclusive of property exempt from execution by the laws of the State of Texas.

T. H. SWEENEY.

Sworn and subscribed to before me, this 22d day of January, 1883.

GEO. C. RIVES,
Commissioner U. S. Circuit Court, E. D. T.

EASTERN DISTRICT OF TEXAS, *ss:*

W. M. Rost, party of the stipulation above, being duly sworn, deposes and says: That he is worth the sum of two hundred and fifty ($250.00) dollars, exclusive of property exempt from execution by the laws of the State of Texas.

W. M. ROST.

Sworn and subscribed to before me, this 22d day of January, 1883.

GEO. C. RIVES,
Commissioner U. S. Circuit Court, E. D. T.

Endorsements: "A. D. No. 551. Irvine & Beissner *vs.* Steamship 'Hesper.' Libellants' stipulation for costs. Filed 22d day of January, A. D. 1883. Geo. C. Rives, clerk."

Agreement of Counsel, Page 7. *Filed Jan'y 26th*, 1883.

IRVINE & BEISSNER
vs.
S. S. HESPER. } In Admiralty.

10 It is agreed that the claimants, the owners of the steamship Hesper, may file stipulation with good and sufficient sureties in the sum of fifty thousand dollars, and that thereupon the said steamship Hester may be released from the custody of the U. S. marshal.

This Jan. 26th, 1883.

BALLINGER & MOTT,
Proctors for Libellants.

Endorsements: "A. D. 551. Irvine & Beissner *vs.* Steamship Hesper. Agreement of counsel. Filed Jan'y 26, 1883. Geo. C. Rives, clerk, by C. Dart, dep't."

Claim of Owners, Page 8. *Filed Jan'y* 23*d*, 1883.

IRVINE & BEISSNER
v.
STEAMSHIP HESPER. } In Admiralty.

To the Hon. Amos Morrill, judge of the district court of the United States for the eastern district of Texas:

The claim of George Horseley, a subject of the kingdom of Great Britain, and resident of Hartlepool, England, claiming the steamship Hesper, her tackle, apparel, and furniture, by John Watson, her master, says that he, the said George Horseley, is the true and lawful and *bona fide* managing owner of said steamship, and that no other person is the managing owner thereof, and that John Watson is the master of said steamship, and duly authorized to make
11 claim therefor. And said claimant prays that this court decree a restitution of said steamship to him, and otherwise right and justice to administer in the premises.

JOHN WATSON.

Sworn to and subscribed before me by John Watson, who further makes oath and says that he is the master of said steamship Hesper and the lawful bailee thereof for the owner.

Jan'y 22, '83.

[SEAL.]

GEO. C. RIVES,
Clerk U. S. Dist. Court, E. D. T., G.,
By C. DART, *Dept.*

Endorsements: "A. D. 551. Irvine & Beissner *vs.* S. S. Hesper. Claim of owners. Filed Jan'y 23d, 1883. Geo. C. Rives, clerk, by C. Dart, dept. W. & W."

Claimant's Stipulation for Costs, Page 9. *Filed January* 27*th*, 1883.

Bond of Claimant.

District Court of the United States, Eastern District of Texas.

IRVINE & BEISSNER
vs.
STEAMSHIP "HESPER" & CARGO; GEORGE HORSELEY, Claimant. } No. 551. In Admiralty.

Whereas a libel was filed in said cause by Robert Irvine & Charles L. Beissner, on Jan'y 22d, 1883, against said Steamship Hesper, her tackle, &c., and cargo, for the reasons and causes in said
12 libel mentioned, and whereas George Horseley has appeared and filed his claim for said steamship, her tackle, by John Watson, master, and the said George Horseley, claimant, as principal, and George Ball and George Sealy as sureties, and the said claimant consenting and agreeing that, in case of default or contu-

macy on the part of said claimant and his sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty ($250.00) dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned, are bound in the sum of two hundred and fifty ($250.00) dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against him by this court, or on appeal by the appellate court.

GEORGE HORSELEY, [SEAL.]
By Att'ys, WAUL & WALKER. [SEAL.]
GEO. BALL. [SEAL.]
GEO. SEALY. [SEAL.]

Taken and acknowledged before me, this 26th day of January, A. D. 1883.

WM. R. JOHNSON,
United States Commissioner in & for the Eastern District of Texas, at the City of Galveston.

13 EASTERN DISTRICT OF TEXAS, *ss:*

George Ball, party of the stipulation above, being duly sworn, deposes and says: That he is worth the sum of two hundred and fifty ($250.00) dollars, exclusive of property exempt from execution by the laws of the State of Texas.

GEO. BALL.

Sworn and subscribed to before me, this 26th day of January, 1883.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in & for the Eastern District of Texas, at the City of Galveston.

EASTERN DISTRICT OF TEXAS, *ss:*

George Sealy, party of the stipulation above, being duly sworn, deposes and says: That he is worth the sum of two hundred and fifty ($250.00) dollars, exclusive of property exempt from execution by the laws of the State of Texas.

GEO. SEALY.

Sworn and subscribed to before me, this 26th day of January, 1883.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in & for the Eastern District of Texas, at the City of Galveston.

Endorsements: "A. D. No. 551. Irvine & Beissner *vs.* Steamship 'Hesper.' Stipulation for costs of George Hooseley, by John Watson, master, claimant. Filed 27th day of Jan'y, A. D. 1883. Geo. C. Rives, clerk, by C. Dart, deputy."

14 *Stipulation of Claimant to abide Decree, Page* 11. *Filed January 27th*, 1883.

District Court of the United States of America, Eastern District of Texas. In Admiralty.

IRVINE & BEISSNER
vs.
STEAMSHIP HESPER. } No. 551.

Whereas a libel was filed in this court on the —— day of January, in the year of our Lord one thousand eight hundred and eighty-three, by Irvine & Beissner, a firm composed of Robert Irvine and Charles L. Beissner, against the Steamship Hesper, her tackle, apparel, and furniture, and cargo, for the reasons and causes in said libel mentioned, and a claim has been filed by George Horseley, as managing owner, and the said claimant, and George Ball and George Sealy, his sureties, the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant, or his sureties, execution may issue against their goods, chattels, and lands for the sum of fifty thousand ($50,000) dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned, are, and each of them is, bound in the sum of fifty thousand ($50,000)
15 dollars, conditioned that the claimant above named shall abide by and pay the money awarded by the final decree rendered in the cause by this court, or in case of appeal by the appellate court.

GEORGE HORSELEY,
By Att'ys, WAUL & WALKER. [SEAL.]
GEO. BALL. [SEAL.]
GEO. SEALY. [SEAL.]

Taken and acknowledged, this 26th day of January, 1883, before me.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in & for the Eastern District of Texas, at the City of Galveston.

EASTERN DISTRICT OF TEXAS, *ss*:

George Ball and George Sealy, parties of the above stipulation, being duly sworn, depose and say, each for himself: That he is worth the sum of fifty thousand dollars over and above all his just debts and liabilities.

GEO. BALL.
GEO. SEALY.

Sworn to before me, this 26th day of January, 1883.

[SEAL.] WM. R. JOHNSON,
United States Commissioner in & for the Eastern District of Texas, at the City of Galveston.

Approved
THEO. HITCHCOX,
Sp'l Dep'ty Coll'r Customs.

16 Endorsements: "A. D. No. 551. Irvine & Beissner *vs.* Steamship Hesper. Stipulation of claimant to abide decree. Filed 27th day of Jan'y, 1883. Geo. C. Rives, clerk, by C. Dart, dep't."

Libel, Page 13. *Filed Jan'y* 22, 1883.

UNITED STATES OF AMERICA, *Eastern District of Texas:*

To the Honorable Amos Morrill, judge of the district court of the United States for the eastern district of Texas:

The libel of Robert Irvine and Charles L. Beissner, owners of the steam lighter Buckthorn, and the steam-tug Estell of Galveston, for themselves and others interested as salvors, against the Steamship Hesper, her tackle, apparel, engines, machinery, and furniture, and cargo, in a cause of salvage, civil and maritime, alleges as follows:

First. That libellants, before and at the time of the salvage services hereinafter alleged, were the owners of the steam lighter Buckthorne, of the value of about fifteen thousand dollars, and of the steam-tug Estell, of the value of about twenty thousand dollars, which said steam lighter and steam tug were used by libellants in the business of lightering freights from the wharves of Galveston to vessels lying at the outer roadstead, and of towing vessels
17 in and out of the harbor of the port of Galveston. They were well equipped with powerful engines and machinery and all other appliances needful for said purposes, and were well adapted for relieving vessels in distress.

Second. That the said steamship Hesper, of the value of about one hundred thousand dollars, on her voyage from Liverpool to Galveston, on the 11th day of December, 1882, ran ashore on the coast of Galveston Island, near the west end thereof, about twenty-five miles from the city of Galveston. She struck the bottom with such violence that she was unable to extricate herself, and lay firmly imbedded in the sand, broadside on, nearly parallel with the beach, helpless, and subject to the wind and waves. Tempestuous weather and high winds prevailed at that season of the year, and she lay in such a position that a strong blow from the east or southeast, which was to be apprehended at any time, would certainly have wrecked and destroyed her. Her condition was one of extreme peril, and she was in imminent danger of total loss, from which she was rescued by the steam lighter Buckthorne and the steam-tug Estell, as hereinafter alleged. Libellants say that but for said assistance the
18 steamer and her cargo would have been entirely destroyed. Her cargo consisted of salt, and was of the value of about five thousand dollars.

Third. That as soon as the perilous condition of the steamship was known in the city of Galveston, which was the nearest point for obtaining assistance, libellants despatched the steam-tug Estell to her aid; that the Estell left Galveston at 1 o'clock p. m. on the 12th of Dec., 1882, and arrived alongside of the steamship about 4½ o'clock p. m. of said day. She immediately attached her towing hawser to the steamer, and, moving ahead with all her power, attempted to

pull her off and into deep water, but, owing to the position of the steamship, and the force with which she had been driven into the sand, the Estell was not able to move her. The Estell cast off the hawser at 9½ o'clock p. m., having been unremittingly engaged in her efforts for more than four hours, and having slightly injured herself from the heavy strain, and returned to Galveston (with the ship's agent on board) for repairs and assistance, reaching there at 10 o'clock on the morning of December 13th.

Fourth. As soon as the Estell reached Galveston, as stated in
19 the third article hereof, libellants, at the request of the agents of the steamship, procured a large anchor, heavy anchor chain, extra hawsers, and other material to be used in the rescue of the said steamship, and placed them aboard the said steam-lighter Buckthorne, and ordered her to proceed to the assistance of the steamer. At the request of the aforesaid agents libellants sent down a number of men on the Buckthorne, who had been employed to take out the cargo. Having made all needful preparations, the Buckthorne left the wharf of Galveston at about six o'clock p. m. on the 13th of December, 1882, and arrived alongside of the steamship at about half-past one o'clock on the morning of the 14th day of said month; as soon as it was light enough to work the Buckthorne laid the large spare ancher and attached it securely to the steamer by a 65-fathom chain and two hawsers, making the same taut, and then put the men aboard the steamship and lay alongside while they were at work taking out the cargo.

Fifth. That the steam-tug Estell, having repaired her damage, at the request of the agents of the said steamship and by direction of libellants, took the schooner "Mary E. Clark" in tow and left the wharf at half-past six o'clock on the morning of the
14th day of said *said* month of December and proceeded to
20 the assistance of the *of the* said steamship, arriving alongside of her about half-past eleven o'clock. The steam-tug Buckthorne then towed the said schooner and placed her in position to receive a part of the cargo of the steamship. The men that had been placed on board by the Buckthorne in the morning had been engaged in taking the salt out of the ship, and after the arrival of the schooner placed a considerable quantity on board of her. At about two o'clock p. m. the Buckthorne attached the tow hawser to the steamship and put a heavy strain on it at about three or half-past three o'clock. A few minutes before four o'clock the Estell attached her hawser to the Buckthorne and went ahead. Both the lighter and the tug then worked ahead with all their power until a few minutes to five o'clock, when by their united efforts they succeeded in pulling her off the ground and towed her into four fathoms of water, when they cast off the hawsers. The Estell then went alongside the steamer, and, placing her agent on board, proceeded to the port of Galveston, and reached the wharf at nine o'clock a. m. on the morning of December 15th. After casting off the hawsers, the
steamship, finding that her achinery was uninjured, finished
21 her voyage to Galveston, and the Buckthorne, having put some men aboard the schooner Mary E. Clark to raise the

anchor, returned to Galveston, and arrived at the wharf at about 8 o'clock a. m. on the morning of the said 15th day of said month of December.

Sixth. That the steam lighter Buckthorne and the steam-tug Estell were well manned and properly equipped. That they performed services that were extremely valuable to the said steamship Hesper, and saved her from total destruction. That the steamship, after she had been pulled off of the ground and into deep water, was reasonably worth the sum of one hundred thousand dollars, and the portion of the cargo that was saved was worth about twenty-five hundred dollars, and that libellants are entitled to a fair proportion thereof as a compensation for the aforesaid salvage services.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty
22 and maritime jurisdiction, may issue against the said steamship Hesper, her tackle, apparel, engines, machinery, and furniture, and cargo, and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court will be pleased to award such a sum of money, proportioned to the value said steamship and cargo, to be due to libellants, as a compensation for the said salvage service performed by the said Buckthorne and Estell, as shall seem meet and reasonable, together with their costs in this behalf incurred, and that the said steamship, her tackle, apparel, engines, machinery, and furniture, and cargo, may be condemned and sold to pay the same, and that libellants may have such other and further relief as in law and justice they may be entitled to receive.

ROBERT IRVINE.
C. L. BEISSNER.

BALLINGER & MOTT,
Proctors for Libellants.

Subscribed and sworn to before me, this 22d day of January, A. D. 1883, by Robert Irvine & Chas. L. Beissner.

[SEAL.] GEO. C. RIVES,
Clk U. S. Dist. Ct., E. D. T., G.

Endorsements: A. D. 551. U. S. district court. Irvine & Beissner *vs.* Steamship Hesper. Libel. Filed Jan'ry 22d, 1883.
23 Geo. C. Rives, cl'k.

Answer, Page 20. *Filed Jan'ry 27th*, 1883.

IRVINE & BEISSNER *vs.* STEAMSHIP HESPER. } In Admiralty.

To the Hon. A. Morrill, judge of the United States district court, eastern district of Texas:

The answer of George Horseley, managing owner of the steamship

Hesper, answering for all the owners of the said steamship, by John Watson, the master and lawful bailee thereof, responding to the libel in this cause filed, alleges and propounds as follows:

1st. To first article of said libel respondents deny that the values of the vessels, the Buckthorne and Estelle, are $15,000 and $20,000, respectively, as alleged.

2nd. To second article of libel respondents say that about 5.45 a. m., on December 12th, 1882, the steamship Hesper, on her way to Galveston, was proceeding along the coast at a very slow rate of speed, about 4 or 5 knots, and that she grounded in water of the depth of about twelve feet; that she did not strike with force or violence, and came upon the ground broadside to the shore. That there was
24 no wind when she grounded, but that the weather was calm, and that there was no sea running. That it is not true that tempestuous weather prevailed, but on the contrary the weather continued fine and the sea calm until the said vessel came afloat. That it is not true that she was in imminent peril at any time, for the weather was such that she escaped all injury; and respondents further deny that she would have been destroyed or lost but for the assistance of the steam lighter Buckthorne and the steam-tug Estelle.

3rd. To the third article of libel resp'ts say, that as the steamship grounded kedge anchors were sent out in boats from the ship, seaward, attached to hawsers. That the tug Estelle came to where she was lying about 5 o'clock p. m. on Dec'r 12th, 1882, and took on board a towing cable belonging to steamship, and towed at her until about 9 o'clock p. m. without accomplishing any result, on account of the insufficient power of the said Estelle. The master of the vessel then requested the said steam-tug Estelle to carry an anchor and line out into deep water, so that the steamship could heave upon it, and get afloat with the rise of the tide. The said steam-tug
25 Estelle and her officers refused to perform this service, but cast off the line with which she had been towing, and returned to Galveston.

To the 4th article respondents say that during the whole time the master of steamship kept command of his vessel and the entire crew stayed on board, and that they were engaged in throwing overboard salt with which said vessel was laden, while the tug Estelle was vainly towing at the cable, and that they threw overboard about 35 tons of salt. The weather remained fine and the sea calm all that night, and the sea was still smooth on the next morning; that on the morning of the 13th of December, 1882, the crew of the Hesper rigged gear for the further discharge of her cargo, and worked on the next day discharging it with the assistance of men employed for that purpose who were in nowise connected with the vessels Estelle and Buckthorne or their owners, and that at noon on said 13th December the ropes of the anchors were shifted from the after end of the steamship to her fore end.

That the said steamship, during the night of the 13th of December (Wednesday), began lifting with the tide, whereupon she hove upon the lines attached to the anchors and by the exertions
26 of her own master and crew, and without any assistance,

worked her head out seaward from a position of N. N. E. to E. N. E. That the steam lighter Buckthorne came about 12.20 o'clock that night, and that on Thursday morning, the said Buckthorne unbent the rope from the anchor, and fastening the hawsers of the Hesper to an anchor, carried it out seaward; and dropped it in eighteen feet water off the starboard bow of the steamship; that about 8 o'clock on the 14th of December the crew of the Buckthorne came on board the steamship and breakfasted, the breakfast being furnished by the steamship Hesper; and respondents say that the hawsers furnished during said work were the property of said Hesper.

Respondents especially deny the truth of the allegation that the Buckthorne put men on board to lighter and take out the cargo, and say that the men who assisted in taking out cargo were laborers who were employed and paid by the ship for that purpose, and that neither the Buckthorne nor any of her officers or crew had anything to do with furnishing men to lighter cargo, or to discharge it, beyond transporting them to the place where the Hesper lay, from Galveston.

5th. To the 5th article of libel respondents say that it is
27 true that the steam-tug Estelle performed mere towage service in towing the schooner Mary E. Clark from Galveston on the 14th of December, but deny that it constituted any salvage service. That the sea was still smooth, and that there was no peril whatsoever to either the vessels or their crew, and that the schooner Mary E. Clark was not brought without order, but was a schooner which — been expressly chartered and engaged by the Hesper for the purpose of lightering her cargo of salt.

Respondents say that the steam-tug and lighter, Estell and Buckthorne, did take a hawser on board, and did tow and endeavor to pull her off, but that the said Hesper, with her steam apparatus, was heaving upon the anchor at the same time, and that her own efforts contributed more to get her afloat than those of the Estelle and the Buckthorne; that in about (1) one hour after the time the tug and lighter began towing the steamship Hesper came afloat, and being wholly uninjured, she did not further require any service from said vessels. Respondents say that the Buckthorne did not tow in a manner to accomplish any benefit in getting the steamship afloat, but that it towed in a manner calculated to put her harder aground, and that he had to threaten to cut the tow lines if
28 they did not tow in a different manner.

That the said Estelle and Buckthorne were not possessed of engines of sufficient power to get the Hesper afloat, and that without the powerful engines of the steamship heaving upon the hawser and anchor they could not have gotten her off the sand.

That the engines of said steamship were in first-class order, that fires and steam were constantly kept up while she was lying aground, and that after lightering the said vessel of her cargo she could have gotten afloat by her own exertions; that during the whole time she was aground the weather was fine and no sea running, and that at no time was there any danger whatsoever either to the Estelle and Buckthorne or their crews.

6th. That the said steamship was ready for sea on Friday, the 26th of January, and that she has been detained at Galveston by this suit, and that but for her seizure she could have been at sea at this time, and that the value of said ship's time is forty-one pounds sterling seven shillings per day.

Respondent herein expressly denies all and singular the allegations contained in said libel, excepting the admissions made herein further admitting the value of the steamship Hesper as alleged.

29 Respondents further say that they are ready, and have always been ready, to pay a reasonable compensation for the services actually rendered by the said steam-tug and lighter, but that they deny that more than compensation for actual service and time is due, and they deny that salvage services were rendered.

JOHN WATSON,
Master of S. S. Hesper.

WAUL & WALKER,
Proctors for Resp'ts.

Subscribed and sworn to before me by John Watson, this 27th day of January, A. D. 1883.

[SEAL.]

GEO. C. RIVES,
Clerk U. S. Dist. C't, E. D. T., G.

Endorsements: "A. D. 551. Irvine & Beissner *vs.* Steamship Hesper. Answer. Filed Jan'y 27, 1883. Geo. C. Rives, cl'k. W. & W."

Testimony of Capt. William McClosky, in behalf of Libellants, Page 26.

Testimony taken at the hearing by stenographer appointed by the court, filed April 4th, 1883, as follows:

Capt. WILLIAM MCCLOSKY, a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Q. What was your occupation in December last; you were capt. of the Estel?

A. Yes, sir; the tug-boat.

Q. Of how much power?

A. The most powerful in the harbor.

30 Q. Who did did she belong to?

A. Capt. Beissner.

Q. Just state now, in your own way, what the Estel did in regard to the Hesper; state it slowly and distinctly.

A. Well, on the 12th of December, I received a note from Mr. Beissner, Muller (?), to proceed down to the steamship Hesper, a-lying aground, and to render all the assistance I possibly could. I left town at one o'clock, and arrived alongside the steamer at half past four. The capt. wanted to know what I would charge to get him afloat. I told him I can't make any bargain, for I didn't know how much labor and how long it would take me. Well, he said, have you got a hawser? I said yes, sir; I have got a hawser; then

he said I had better give you my hawser, and I said all right; he had two small *ketgde* anchors. I took his hawser off his steamer, and we worked and he pulled there, I suppose, until about eight o'clock that night, and then he hallowed to me to ease down or he would slip the hawser; and then, afterwards we pulled until half past nine o'clock, and the capt. hallowed to let go the hawser; he then wanted us to run an anchor from him. I told him I can't come in, there is too much sea; it is too risky; there is too much sea; it is half past nine o'clock at night; it is too risky; I
31 want to render all the assistance I possibly can, but I can't go in with that boat.

Q. When you got to the Hesper what was her position?

A. She was almost broadside on the beach—not quite but almost.

Q. In what depth of water was she?

A. In 13 feet of water on the inshore side.

Q. How was the sea running?

A. At that time the sea was moderate, but it was increasing all the time.

Q. Was there any damage done to the Estell—did she strike ground?

A. I can't state positively; she made a leak, and has leaked ever since, and had to be pumped out.

Q. And you say the reason that you didn't go in and get that anchor was because there was too much sea?

A. Yes, sir; it was breaking close to us.

Q. What distance from the shore was the Hesper?

A. I would not state positively; probably a mile; I could not state positively; somewhere thereabout.

Q. What, then, did you do after you cast off?

A. I didn't do anything more; Mr. Muller said to proceed to Galveston and get some hawsers and men.

Q. By the way, who was Mr. Muller?

A. I suppose he was one of the agents of the ship.

32 Q. Was he a ship broker here in town?

A. Yes, sir.

Q. Well, after you got in, did you return to the Hesper?

A. I had to get some temporary repairs to the vessel; the water was leaking — so much.

Q. Had she been leaking previous to your helping the Hesper?

A. No, sir.

Q. How long did it take you to make those temporary repairs?

A. I worked all night.

Q. When did you return?

A. I returned on the morning of the 13th, and pulled in towards her until I got into 11 feet of water; then I didn't dare go any further for fear I might ground; the Hesper had worked up towards the beach.

Q. When you went back the ship was in less than 11 feet?

A. Yes, sir.

Q. What, then, did the Estell do?

A. We took the schooner Mary E. Clark alongside of her, and she

began discharging her cargo into her, and I went aboard of her and suggested that the Buckthorne use what force she could; I went on board again, and the Estell fastened her hawser to the Buckthorn, and, when we got straightened out, they told me that the en-
33 gines wouldn't work on the Hesper; she had got the suction all choked up; they could not work that, but finally they started their engines.

Q. Well, did you attach the hawser of the Estell to the Buckthorn?

A. Yes, sir.

Q. What did she do?

A. She was pulling also; the Buckthorn was ahead of the Hesper I was ahead of the Buckthorn.

Q. Both the Estell and the Buckthorn pulled on her until she came off?

A. Yes, sir.

Q. Was the steamer Hesper injured?

A. That I don't know, sir.

Q. Didn't she come to town without any assistance? Was her engines working?

A. Yes, sir.

Q. How long have you been on this coast, Capt.?

A. I have been here since 1865.

Q. I would ask you first whether most of the time that the Hesper was aground whether the water was not calm.

A. The second time I went down it was remarkably smooth water.

Q. The first time you went down there was a good deal of swell came on?

A. Yes, sir; increasing all the time.

Q. What are the prevalent winds on this coast at this time of the year?

A. From E. & southeast.

Q. With what strength do they blow?

A. Pretty strong at times.

34 Q. Suppose there had been a strong east or southeast wind came up; what effect would it have had on the Hesper, situated as she was?

And to this question the defendant objects, as irrelevant; and the court overrules the objection; to which ruling of the court the defendant at the time excepted, and still excepts.

Q. Then I repeat the question; what would have been the effect of a blow from the east or the southeast?

A. Probably it would have wrecked her.

Q. What weather prevails here in Dec.? What winds?

A. From east to southeast.

Q. Well, now, I ask you if there was an east or south wind came up, what would have been the effect upon that vessel in her position?

A. In all probability she would have been lost.

Q. For what purpose is the Estell; what is she used for in this port?
A. Towing.
Q. You say she is the most powerful tug in the harbor?
A. Yes, sir.
Q. Used in towing the heaviest ships?
A. Yes, sir; I generally have to take the heaviest ones.

Cross-examination:

35 Q. What time did the Estell arrive at Galveston on the first night of her return?
A. The first trip?
Q. Yes, sir.
A. It didn't get in until the next day.
Q. But when she returned back, after she left the Hesper the first night; what time did she get in?
A. She didn't get back until the next morning—the next forenoon.
Q. I understood you to say it took her all that night to repair her damages.
A. That was the second trip; the first trip we went down on the 12th, and we didn't get back until the 14th.
Q. I want to find out what those damages consisted of; did you require any ship-carpenters' services?
A. Yes, sir; we did.
Q. What did they do?
A. They made temporary repairs.
Q. What did they consist of; what was the work done?
A. Bracing inside, corking, etc.
Q. How many ship-carpenters were employed upon her, and who were they?
A. Well, Mr. Bruggaman.
Q. Did he have anybody except himself?
A. I believe that is all; no more than one could work on it.
Q. Only one man could work at it?
A. Yes, sir.

Q. When did she first commence leaking?
36 A. The first night after we knocked off towing she commenced making water.
Q. Did she strike on the bottom?
A. I could not state positively; she may have.
Q. What water was she drawing?
A. 8.8 feet.
Q. You testified there was 13 feet of water that evening on the inside of that steamer—that is, between the steamer and the shore; I will ask you if the bottom does not gradually slope as it goes out; if the water doesn't get deeper?
A. Yes, sir.
Q. How was it possible for a vessel drawing only 8.8 feet to strike in water of 13 feet depth and deeper?
A. It wasn't safe to go in.

Q. I will ask you if you ever struck in water of 12 feet when the sea was as smooth as on that occasion?

A. No, sir.

Q. Then the straining or leaking was not caused by striking on the bottom?

A. I could not state positively.

Q. Wouldn't you have known it if she had struck?

A. She might have struck very lightly.

Q. Would it have damaged the vessel then?

A. Yes, sir.

Q. Could any damage have been caused without your knowing?

A. Yes, sir.

37 Q. Was the sea rough enough to have caused it that strain?

A. Yes, sir.

Q. At that time?

A. The sea was increasing all the time.

Q. How far were you from the vessel when you were towing at the hawser; what length of hawser did you have?

A. I could not say; 40 or 50 fathoms, I suppose.

Q. That is about 240 feet?

A. Yes, sir.

Q. Please state the depth of the water out where you were towing; you say it was 13 feet alongside of the vessel; how deep was it out where you were?

A. It was a little deeper; about 3 feet, or maybe 3½ feet; I did not notice particularly.

Q. How much water was the Estell making at the time?

A. Considerable; I could not state positively how much.

Q. Can you state positively what caused the leak?

A. Strain upon the vessel.

Q. Then she was not so constructed as to be able to tow in a vessel without straining; is that what you mean to say—that the Estell could not tug without straining?

A. Yes, sir.

Q. If she is not of sufficient strength to tug in a vessel, or to get a vessel off the sand situated in that way, do you consider her

38 a vessel constructed to perform such service as that?

A. Towing ordinary times; yes, sir.

Q. Could you hear the men talking on the Hesper at the time you left?

A. No, sir.

Q. How did you learn, then, of their wanting you to take out that anchor?

A. They came out in a boat—the life-boat.

Q. What was the size of the boat?

A. One of their surf-boats attached to the steamship.

Q. Was there any danger of that boat swamping?

A. Yes, sir; at that time.

Q. Was the sea breaking over his vessel?

A. No, sir; not over his vessel; it was very high, though; it was breaking all around close to us.

Q. Did you go around the vessel with the Estel; didn't you go around on the inside of it?

A. I did when I first got there; the sea was moderately smooth then; but it kept increasing all the time.

Q. Wasn't the wind about southeast?

A. Yes, sir; it was about S. E.

Q. The vessel lay broadside to the sand?

A. Yes, sir; almost.

Q. Whatever sea there was, was going against the broadside of the vessel?

A. Yes, sir.

39 Q. How much longer was that vessel than the Estell?

A. I don't know, sir.

Q. It was somewhat longer?

A. Yes, sir.

Q. What was there to prevent you, then—there being 13 feet of water on the inside of that vessel—what was there to prevent you from lying on the lee side of the vessel?

A. It was too dangerous.

Q. But there was no sea on that side at that time when the sea was breaking on the other?

A. This was half-past nine o'clock at night.

Q. Wasn't it apparently smooth?

A. It was when I first went there.

Q. Could there have been any sea on that side of the vessel when it was breaking on the other?

A. There was some.

Q. Could there have been any considerable force of the waves caused by the water between the ship and the shore to have made it dangerous for you to have laid alongside of that vessel on the shore side?

A. The sea was getting around.

Q. Was there any appreciable danger to you had you taken the Estell around the leeward side of that vessel?

A. Yes, sir. I wouldn't have taken her there under no consideration; it was too great danger to boat and life.

40 Q. I think I understand you to say that you didn't know the exact power of your engines?

A. No, sir; I do not.

And the witness was then excused.

Testimony of Ambrose Baldy, in behalf of Libellants, Page 37.

Mr. AMBROSE BALDY, a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Q. What was your business last September?

A. Engineer of the Estell.

Q. What is the power of the Estell, Mr. Baldy?

A. 100 horse-power.

Q. Uses strong engines?

A. Yes, sir.

Q. Do you know anything about her going to the Hesper?

A. Yes, sir; I went down on her.

Q. Tell what you know, of your own knowledge, as to what she did when she got there?

A. Well, when we went down there—we went down the first time that afternoon—we went around right across her bow and swung in; that would put us in about 12 feet of water on the inside, and we took the Hesper's line and went down around the beach, and commenced pulling on her.

Q. Pulling in what direction?

A. I think about south, down the beach; there was a current setting out down the beach, and I think we pulled in
41 that direction; I was not in the pilot-house, and could not state positively in what direction we were pulling.

Q. You pulled to the stern?

A. We went around her bow and took a line out and went out south and pulled her from the beach.

Q. How does the beach run there—about the points of the compass?

A. I don't know.

Q. What was the condition of the sea when you first went down?

A. Just ordinary; when we got down there it was not very heavy, but smooth, good level water.

Q. What was the condition of the sea at 9 o'clock that night?

A. It was beginning to break where we were pulling.

Q. It had increased then?

A. Yes, sir; it was increasing when we left.

Q. Was any damage done to the Estell that evening?

A. Yes, sir.

Q. What was it?

A. Where the shaft comes through the dead-wood it was split open.

Q. What do you mean by dead-wood?

A. The turnup outside of the hull.

Q. What caused that to split?

A. The strain upon the ship.

42 Q. She was working in a dangerous position when she was towing?

A. I thought once or twice we would put her on the beach.

Q. What kind of a boat is the Estell in regard to her build?

A. Well, sir, every timber in the Estell is the very best; I have examined her; every plank is good.

Q. You consider her well built.

A. Never a better hull in the U. S.

Q. What character of engine had she?

A. She has got a marine engine, built in Rhode Island, Providence.

Q. Good, bad, or indifferent are they?

A. Good; done the work here for four years; towed ships, brigs, barks, off banks, and to and from the wharfs; she has done it for the last four years.

Q. Pulled them off banks, and off the beach, and in the harbor?
A. Yes, sir; towed the New York Shipright out over the bar.
Q. After you left there that night what time did you get alongside into the wharf?
A. I could not tell, sir; we came up somewhere about the bar and the fog was so dense we waited a while, and when the fog began to break up we came in the next day.
Q. How long did you stay at the wharf before you went back?
A. We got in that evening and then we went and put the
43 carpenters to work on her that night, so as we could get her fixed up to go back.
Q. What repairs were done?
A. They shoved the timbers of the dead-wood and put other upright beams down on to it so that it could not move any more, and then they shoved it over the timbers back into its place.
A. That fell rather in your department in the repairing of the engines?
A. They were wood repairers or carpenters.
Q. It was to the fittings and to the sidings of the engines that most of the work was done?
A. Yes, sir.
Q. Was she leaking any?
A. Yes, sir.
Q. Anything done towards stopping the leaks that night?
A. Yes, sir; the carpenters were working at it; that is what they had to do.
Q. What time did you return to the Hesper the second time?
A. I don't know; sometime about 5 o'clock in the evening; somewhere along there; I don't remember exactly.
Q. You have heard the testimony of Capt. McClosky; that is about all you know about it?
A. Yes, sir.

Cross-examination:

44 Q. You say the engines of the Estell were 100 horse-power?
A. Yes, sir; I could not say that they are exactly that, but somewhere near it.
Q. Do you know what her power actually is?
A. No, sir; not exactly.
Q. Simply a guess?
A. If you get the figures and figure on it you can find out what her power is.
Q. I supposed an engineer would know.

Re-examination:

Q. You know it is about 100 horse-power?
A. Yes, sir.
And the witness was then excused.

Testimony of Capt. Watterson, in behalf of Libellants, Page 41.

Capt. WATTERSON, a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Q. What was your business last December?
A. I was master of the steamer Buckthorne.
Q. What was the Buckthorne?
A. It was principally used as a lighter.
Q. Who does she belong to?
A. *E* rvin- & B-is-ner.
Q. Did the Buckthorn go down to the Hesper?
A. It did, sir.
Q. How came she to go?
A. I received orders from Mr. Irvine.
Q. When?
A. I think it was on the—I do not distinctly recollect the date, but I think it was on Dec'r 13th or 14th.

45 Q. Capt. *E* rvine ordered you to go the Hesper; did you go?
A. Yes, sir.

Q. What did you take along with you?
A. I took an anchor, chains, and couple of hawsers, also men sufficient to lay the anchor.
Q. Anchor, chains, and a couple of hawsers; how many men did you take?
A. I think I took about 25 men.
Q. What time did you reach there?
A. I got there the following morning about half-past one—probably one; I don't know exactly.
Q. What did you do, Capt., when you got there?
A. I laid the anchor and passed the hawser on board, and put the men on board of her.
Q. How did you lay that anchor, how far from the ship?
A. I don't know the distance we laid it; we put it down about three fathoms and a half.
Q. What did you attach to the anchor?
A. We attached these 60 fathom chains on to it, and the hawser on to the chains.
Q. What was the length of the hawser?
A. One full coil and a part of another one. There was two hawsers put on board of the ship. The length of a hawser is about 125.
Q. They were attached to the chain?

46 A. Yes, sir.
Q. How were those hawsers attached to the ship?
A. We passed them aboard.
Q. And they attached them?
A. Yes, sir.
Q. These men that you carried down, did you use them, or simply your own crew?
A. They assisted.
Q. Well, you put the men on board the vessel; what did the Buckthorn do then?
A. I stayed for some time inside of her; I even laid on the water side of her, and then we dropped on alongside and lay there. I laid there until the steamer Estell came along with the schooner Mary A. Clark in tow. I went to her then and towed the schooner

alongside of the Hesper, and finally took the ship's hawser and commenced towing on her.

Q. Well, at what time did you take the ship's hawser to tow on her?

A. I had no time-piece on board; I thought it was about half past one, maybe a little later.

Q. What was being done to the ship in the meantime by these men that you took down?

A. They commenced throwing salt overboard.

Q. Well, after the Clark got alongside of her, did they put any in her?

A. Some.

Q. When you first took the hawser, did you straighten yourself out at once?

47 A. Yes, sir; I did.

Q. The current was so strong running to the eastward that the boat was gradually drawn towards the shore. I seen it and I told the ship to give me more hawser in order to be able to get further off to the sea. I pulled there gradually, going out into deep water, until the Estell come; and then we straightened this towards the anchor that I had laid, and the two of us kept pulling on it, until finally the ship came off.

Q. What about that anchor you laid then; was the ship pulling on it?

A. With the steamer's capstain, I suppose.

Q. You really then didn't properly straighten out until the Estell took you?

A. Well, no; but I got far enough off; I would finally have gotten her off, but the Estell took hold of me and assisted me in doing so.

Q. How long, then, did you and the Estell pull before she came off?

A. I suppose we pulled there about somewhat near two hours or two hours and a half.

Q. Do you know how much salt had been taken out of her?

A. I don't know, sir; I should think that they throwed over considerable; maybe a third.

Q. What is the power of the Buckthorn?

48 A. That I could not say, sir; the horse-power of her.

Q. She has been used in lightering; has she ever been used in towing.

A. Yes, sir; we have done towing.

Q. She is adapted to that purpose?

A. Yes, sir.

Q. How long have you been on this coast?

A. For 25 years; since 1857.

Q. Can you tell what weather will probably prevail during December, the middle of December?

A. Well, except during the time that we have northers, the wind is generally from the east; that is, from northeast around to the southeast. I call it easterly.

Q. Blow with any intensity from these directions—any force?
A. You can expect it at any time.
Q. You may expect a blow at any time?
A. Yes, sir.
Q. What would have been the effect of one of those blows?
A. It would have ended her up.
Q. It would have wrecked her?
A. Yes, sir.
Q. Wasn't the sea smooth and weather calm at that time?
A. Yes, sir; weather good at that time.
Q. Well, after you got her off; what did the Buckthorn do after you pulled the Hesper off?
49 A. I took aboard all the men that I left on board that morning, and took them down to the Mary A. Clark for the purpose of raising the anchors which I laid for her to get the ship off.
Q. And then you came to town?
A. Yes, sir.
Q. The Hesper was uninjured, and able to navigate herself?
A. Yes, sir; so far as I knew; all she wanted was one of the boats, either the Estell or the Buckthorn, to keep ahead of her and pilot her up to the Galveston wharf.
Q. Was that done?
A. Yes, sir; as she was a faster boat than the Buckthorn; the capt. of the Estell spoke to me, and said his boat was faster, and I proposed that he do the piloting and I would attend to the men.
Q. How long were you putting the men on board of the Clark after the Hesper got off; how much longer were you detained?
A. About an hour.
Q. What time did you get back into the harbor?
A. I left the Clark somewheres about 7 o'clock that evening—the schooner Clark I left her about 7 o'clock, and we anchored until the following morning off the bar on account of the fog, which was so dense that I did not care to attempt to come to the wharf; I
50 laid there until about 8 o'clock, and then hove anchor and got to town about 10 o'clock.

Cross-examination:

Q. You spoke about carrying some men—about 25 men?
A. Yes, sir.
Q. Who employed those men?
A. That I don't know, sir.
Q. Was Mr. Charles Clark along?
A. Yes, sir; he was along.
Q. Weren't those men under the supervision of Mr. Charles Clark?
A. Mr. Clark seemed to have charge of them.
Q. Weren't those men carried down there for the purpose of unloading that salt?
A. So I understood.

Q. When they got down to the vessel weren't they put upon the vessel, and did they not go to work discharging the salt?
A. Yes, sir.
Q. Didn't you take a tow line on the Buckthorn?
A. Yes, sir.
Q. Did you have enough of your own force to get it aboard?
A. At first I did not have.
Q. Didn't you have to get assistance?
A. Yes, sir.
Q. Then your vessel was not sufficiently manned for you
51 to carry a tow line aboard?
A. By putting a string onto the line we got it aboard.
Q. As a matter of fact, though, you got assistance from the life-saving crew to tow the line from the vessel?
A. Yes, sir.
Q. How many were in your crew?
A. Six, all told.
Q. Including yourself and the engineer?
A. We all assisted; there was 5 men, including myself and the engineer.
Q. When you commenced towing—when you straightened out to tow—did you not tow in towards shore at first?
A. I did not.
Q. Did the capt. say anything to you about the manner in which you were towing?
A. Yes, sir; before I got a string on to the hawser I was towing right up the coast.
Q. In what direction up the coast?
A. Sometimes about northeast; I don't exactly [know] how the coast runs at that particular place.
Q. Didn't he tell you not to tow in that direction?
A. Of course; I knew myself he did not want to go in that direction, and I commenced to tow towards the anchor in order to get her further off.
Q. I want to know what the capt. said to you.
52 A. To keep her further out; when he sung out to me I was then in the act of putting the string on to the anchor in order to swing around.
Q. At that time you were towing up the coast?
A. Yes, sir.
Q. What else did the capt. say then?
A. That I could not say; I was rather far off to understand what he did say; I know that the understanding was that the Estell was to go ahead of me.
Q. When you and the Estell were towing at that line was he not towing at the same time to the line attached to the hawser?
A. I suppose so; the hawser from the anchor that I laid?
Q. Yes, sir; with the machinery of the Hesper?
A. I suppose so.
Q. Don't you know it?
A. I was not aboard of the ship.

Q. Couldn't you see the effect upon the lines?
A. They had the lines all taut.
Q. Then they were heaving upon them all the time?
A. I suppose so, that they were heaving.
Q. How far was it out to 13 feet of water from where the ship lay?
A. I could not say positively.
Q. How far was it out to 12 feet of water?
A. I don't know that.
Q. How far did she move from her position when you took hold of her until she became afloat?
53 A. I suppose she had to go two or three ship's lengths; I understood that she drew 12 feet of water or 13 feet; I don't know which; I stayed on board of the ship a very short time; that I didn't find out accurately.
Q. Mr. Clark's men came back upon your vessel?
A. Yes, sir; from the steamship.
Q. And you carried them back to town?
A. Yes, sir; I suppose they were Mr. Clark's men.
Q. You claim no supervision over them?
A. None whatever.

Re-examination:

Q. I will ask you why didn't the Estell take that tow from the ship herself?
A. The Estell couldn't have got close enough to her; there was water enough, I think; but I understand the draft of the Estell is such that it would have been very risky for her to do so.
Q. Did you draw less water than the Estell?
A. Yes, sir.
Q. What kind of a bottom is it along this coast, opposite the island where the Hesper was?
A. It was hard, sand bottom.

Cross-examination:

Q. You spoke about carrying out a hawser; who did that hawser belong to?
A. I suppose it belonged to *E*rvin- & B-is-ner.
54 Q. Did you not know who it belonged to?
A. No, sir; they put it aboard of my vessel; I received the material on board of the boat.

And the witness was then excused.

Testimony of Louis Lewis, in behalf of Libel'ts, Page 50.

Mr. Louis Lewis, a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Q. What was your occupation last December?
A. I was seaman aboard the Estell.
Q. Did you go down to the Hesper?
A. I did, sir.

Q. What time did you arrive there, about?
A. Somewhere about 4 o'clock in the afternoon.
Q. What was the condition of the sea at the time you first got there?
A. When I first got there, there was not much sea on, but it kept increasing.
Q. What was the condition at 9 o'clock?
A. There was a good deal more sea than when we first started.
Q. It was risky for you, then, to have gone any closer to the steamer after 9 o'clock at night?
A. Yes, sir; very dangerous.

Cross-examination:

Q. Were you aboard when you went back the second time, two days afterwards?
A. Yes, sir.
Q. How was the sea then?
55 A. There was not a good deal of sea, but some serf.
Q. Wasn't the sea pretty smooth when the boat actually got off?
A. No, sir; not very smooth, not as smooth as the first time.

And the witness was then excused.

Testimony of Capt. Robert Irvine, in behalf of Libellants, Page 52.

Capt. ROBERT IRVINE, one of the plaintiffs, testified in his own behalf as follows:
Q. Capt. do you know the tug Estell and the lighter Buckthorn?
A. Yes, sir; I have known them for some time.
Q. Who do they belong to?
A. To Mr. B-is-ner and myself, and the Estell to Mr. Beis-ner alone.
Q. Last December?
A. Yes, sir; Irvine & Beis-ner.
R. What is the value of the Buckthorn, Capt.?
A. Not less than $15,000; I would not take that for her.
Q. What was the value of the Estell in December last?
A. $20,000.00; the boat could not be made for that by any means?
Q. Is she a powerful boat; well adapted for the purpose of towing?
A. Yes, sir.
Q. It is in testimony that you dispatched the Estell and Buckthorn to the Hesper; how is that?
56 A. Mr. Muller had a dispatch from the capt. stating that the ship was ashore and to send the Buckthorne and the Estell down there; that was the first day; and then after he returned the next day he requested us to send down an anchor.
Q. Who was Mr. Muller?
A. The ship's agent.
Q. He requested you to send the Estell down there?
A. Yes, sir, and wanted lighters also.

Q. And he requested you to send the Buckthorn with the anchors and chains?

A. Yes, sir.

Q. What about some men; he engaged some men, didn't he?

A. He engaged some men to throw the cargo overboard and we carried them down.

Q. Did the anchor and the hawsers and chains belong to you?

A. The anchor belonged to us, and the chain was either ours or Mr. Clark's; there was a whole lot; some ours and some Mr. Clark's.

Q. The hawser belonged to whom?

A. It came from the ship-chand-ers.

Q. The anchor was yours?

A. Yes, sir; and the hawser was bought for the Hesper.

Q. These men that went down there, they were engaged by Mr. Muller?

A. Yes, sir; by Mr. Muller, the ship's agent.

Q. Was anything said between you and Mr. Muller about the compensation?

A. No, sir.

57 Q. He came to you and requested you to send your tug and lighter down there?

A. Yes, sir.

Q. Capt., what [was] the condition of the Estell before she went down there?

A. In as good condition as a boat could be in; she had just come from New Orleans last summer.

Q. Did you see her the first time she came up from the Hesper?

A. Yes, sir.

Q. What damage was there done?

A. The staff of the stuffing box over the trench, which the staff passes through, the engineer didn't have it tight enough and it was soon too long; we had only the two carpenters to fix it, to tie it down securely; they —— it leaking considerably also.

Q. Have you ever had her overhauled or repaired since?

A. We got a party to take her out of the water.

Q. What will it cost to repair her from that damage?

A. You can't tell anything about what it will cost until you get her out of the water and see what it is.

Q. Well, about what will it cost to send her to New Orleans?

A. And put her in the dock?

Q. Yes, sir.

A. About $1,500.00.

58 Q. Besides all her repairs?

A. Yes, sir.

Q. What were the expenses of the Estell a day?

A. About $60.00.

Q. What were the expenses of the Buckthorn a day?

A. About the same.

Q. What did the Estell earn a day when she was in business?

A. Two or three hundred dollars; of course some days she didn't earn anything.

Q. But when she was engaged in towing what can she earn?
A. She can earn about $300.00.
Q. What did the Buckthorn earn a day when she was engaged in her business?
A. Somewhere about the same.
Q. Do you know anything about the coast; about the weather that prevails here in winter?
A. I know about as much as anybody that lives her-.
Q. How long have you been here?
A. About 13 years.
Q. What winds prevail here in Dec.?
A. I suppose the prevalent winds are from east to south.
Q. Do they blow with any intensity during those times?
A. Yes, sir.
Q. If one of those winds had come up while she was in that position what effect would it have had on her?
59 A. It was pretty near broadside on the beach, and if one of those winds would come up it would put her pretty far up on the beach, and very difficult, maybe, to get her off; if she had been on endways it would be much better than on a side.
Q. Was a blow of that sort to be apprehended?
A. It was; yes, sir.
Q. What is the charater of the ground or bottom?
A. The same as all along the island.
Q. Quicksand or hard?
A. Hard sand called quicksand.
Q. What effect has that sand upon a vessel sunk into it?
A. It has the effect just as if the vessel was working itself right into it.
Q. Does the action of the water deepen the sand immediately around the vessel?
A. That always keeps it in motion. I have noticed that where a ship comes up on the sand you will always find motion.
Q. Makes a pocket there around the ship?
A. Yes, sir; the sand goes down around the vessel; it is always in motion.
Q. Especially if it was a flat-bottom vessel and hard to manage?
A. Yes, sir; the way to get them off is by working them in the sand.

And the witness was then excused.

And here the plaintiffs rest.

60 *Testimony of Chas. Clark, in behalf of Respondent, Page 56.*

Mr. CHARLES CLARK, a witness in behalf of the defendant, being first duly sworn, testified as follows:

Q. Mr. Clark, did you take any part in unloading the cargo of the Hesper in last December?
A. Yes, sir; I was employed by Mr. Muller.
Q. How many men were there?

A. There was 27 of us, all told.
Q. For what service were you employed?
A. To go down the island and get the ship off.
Q. You went down on the Buckthorn?
A. Yes, sir.
Q. What did you do after you got there?
A. We done a good deal after we got there.
Q. Well, what did you do?
A. We run the anchors out and brought the ends of the line back to the ship, and then we went aboard and commenced to heave the cargo overboard. Some of my men were working when she came off.
Q. How much salt was discharged?
A. I should judge about four thousand sacks—between three and four thousand sacks.
Q. What was the effect of discharging that salt; what effect did it have upon that vessel?
A. It lightened her up.
Q. Did you notice how much it lightened her?
61 A. About a foot and a half or two feet.
Q. Do you recollect how much water there was around the ship when you commenced lightering her?
A. When we commenced I should judge she was laying in eleven and a half or 12 feet; she was laying right side on the beach; her bow was out a little.
Q. After you had thrown the 4,000 sacks of salt off was there any perceptible effect upon her; was she lightened enough so that she could move?
A. They kept her heaving her off until she lightered her up.
Q. What effect did the heaving upon the anchors have?
A. It kept her head out; caused to heave her head off.
Q. Then I understand you to say that after she was lightened up by this throwing overboard of the salt that with her own steam she was pulling out to sea.
A. No, sir; not until the boats got out ahead of her.
Q. How many sacks of salt could you lighter per hour?
A. 125 to 150 sacks per hour.
Q. You were divided up into two gangs, weren't you?
A. Yes, sir; each gang could lighter that much.
Q. About 250 sacks an hour?
A. Yes, sir; the probabilities are that about 3,000 sacks were thrown overboard.
Q. Was settlement with you for all services done with you?
A. I thought I had better settle the way it was; I didn't
62 want to go into court and do anything, as I had been employed by Mr. Muller.
Q. When the hawsers were taken in how did she work; after the *schooner* got afloat what did your men do?
A. Why, after the vessel got afloat it was nigh dark, and we got the hawsers, so I left my schooner to pick the anchors up by the request of Mr. Muller.

Q. It was your men and your schooner?
A. Yes, sir; it was the men that were under my charge.
Q. Did Ervine & Beis-ner have anything to do with your men?
A. I don't know; we all worked together; our mens' pay commenced from the time we left the wharf.
Q. Were your men under the employ of Ervine & Beis-ner, or under the employ of Muller?
A. Of Muller.
Q. Whose men were working at the hawsers and at the winches at the time she actually came off?
A. Some of my men and some of the Hesper's; I think there was one of my men working to heave the hawser; then there was some shipmen; it is hard to tell; there was everything in a hurrah there when she started to go off.

Cross-examination:

Q. You say the schooner stayed back and got the anchor, Mr. Clark?
A. Yes, sir.
Q. Have you ever had a settlement for that?
63 A. No, sir; I have not.
Q. What is the amount of your claim?
A. For the schooner and the men, $1,000.00.
Q. That is an unsettled claim?
A. Yes, sir.

And the witness was then excused.

Testimony of Capt. Johnson, in behalf of Respondents.

Capt. JOHNSON, a witness in behalf of the defendant, being first duly sworn, testified as follows:

Q. Capt., what has been your employment for the last number of years during your lifetime?
A. Insurance inspector.
Q. What has been your experience as a seaman?
A. I have been a seaman all my life.
Q. Are you acquainted with this coast?
A. Acquainted perfectly.
Q. You have heard the testimony of the witnesses with regard to the Hesper and the manner in which she was gotten off?
A. I have, sir.
Q. From the statement, do you know anything about the Hesper; did you ever see her?
A. I knew the ship.
Q. What sort of engines did she have?
A. Compound engines, double engines.
Q. Do you know what power?
A. No, sir; I don't know exactly.
Q. Can you make an estimate?
A. I could not tell what her power was.

Q. Suppose she was a 1600-ton ship with the engines to suit, could you tell her power then?

64 A. I don't know what the horse-power is.

Q. You don't know what the ordinary power of a ship that size would be?

A. No, sir.

Q. You have heard it described here of these engines working upon their winch in heaving on the anchor they had out, and the engines at work, and the two boats; you have heard a description of the boats, their power, etc. What would be the relative service of those two tugs, and the engines, and the men working on the Hesper in getting her off?

A. I don't understand you exactly.

Q. What effect would pulling upon the winches on the ship, a man aboard the ship and drawing upon the anchor that is fast; would you think that would — of as much service as the tugs?

A. I suppose about the same.

Q. Just about the same effect as the tugs would have?

A. I presume that the steamer would have as much effect as the tugs.

Q. Do you know these tugs?

A. Very well, sir.

Q. What are they worth?

A. Well, I should suppose that the Buckthorn was worth about as she was estimated at to-day and the Estell as she was estimated at; it cost a great deal more money to build it.

Q. They were worth about that much?

65 A. Yes, sir; as near as I can calculate.

Q. Will you state now Capt., you have listened to the testimony; have you had any experience in towing vessels when aground.

A. I have had no great experience in towing vessels or ships that were aground, but those that were wrecked.

Q. What would you judge of the value of the services rendered?

A. That I could not answer, sir.

Q. From what they have stated?

A. I could not answer.

Q. Could you state what you would have done the work for?

A. I have no facility for doing any such work; I should have had to have hired a vessel and it would have been very expensive to me.

Cross-examination:

Q. Have you had any experience on this coast, Capt.?

A. Not in the wrecking business; I have had great experience on this coast though.

Q. Are you familiar with the conditions of the weather that prevail here at different months of the year?

A. Yes, sir.

Q. What winds are prevalent in December?

A. The winds that are most prevalent are from east to the southeast; a good deal of south; the easterly winds are heavy.

Q. What would have been the effect of one of those winds
66 upon that vessel as she lay there in that condition?

A. She would have been probably lost.

And the witness was then excused.

Testimony of Capt. Simms, in behalf of Respondent.

Capt. SIMMS, a witness in behalf of the defendant, being first duly sworn, testified as follows:

Q. Capt., I believe you have charge of a revenue cutter?

A. Lieutenant in charge; yes, sir.

Q. Were you in command of her in Dec. last, 12th of Dec.?

A. Capt. C. M. Scannon was in command, but he was sick at the time.

Q. You were in charge?

A. Yes, sir.

Q. Whereabouts were you at the time?

A. We were in Galveston on the 13th of December.

Q. Were you down at the place where this vessel was?

A. We were notified to go down there and look after the interests of the Government; to look after the duties on foreign cargo—salt.

Q. What time did you go down?

A. About 6 o'clock.

Q. How long did you continue down there?

A. We remained there until the 14th; the afternoon of the 14th.

Q. How did the sea continue?

A. The water became threatening and very thick towards evening.

Q. What time did the Hesper get off?
67 A. The Hesper was up to town on the 15th.

Q. Was she gotten off while you were there?

A. After we left.

Q. Did you see the Hesper or her officers?

A. I did; I went on board.

Q. Did you offer your services?

A. I did.

Q. What did they say?

A. The capt. said he had sent to Mr. Muller to get boats to get the vessel off, but requested us to stay to render aid if necessary. On the morning of the 14th Mr. Muller arrived in the Buckthorn. I went on board and also tendered my services to Mr. Muller, and they made arrangements with the capt. to carry his vessel off, and he thought no further aid would be necessary.

Q. Was there during the morning of the 14th a heavy sea running?

A. There was considerable of a swell on the beach next to the shore.

Q. Where the vessel was lying aground?

A. Yes, sir; she was aground in 13 feet of water.

Q. Was there a heavy sea there?

A. Considerable of a swell at that time, on the 14th; it was gradually increasing.

Q. What time did you leave there?

A. I left there about two o'clock on the afternoon of the 14th The capt. of the vessel stated that he did not need our services The crew of the life-saving station were on board and working; besides Capt. Seamon was very ill, and I had to go to town to
68 get medical services for him.

Cross-examination:

Q. You were not down the first evening that the Estell had gone down.

A. No, sir; we had not received any notice; we were simply notified by the inspector to go down and look after the Government duties; we had a special inspector.

Q. Mr. Muller came down on the Buckthorn when she came down?

A. Yes, sir.

And the witness was then excused.

Testimony of Mr. Muller, in behalf of Respond't.

Mr. MULLER, a witness in behalf of the defendant, being first duly sworn, testified as follows:

Q. Mr. Muller, you are the agent of the ship Hesper?

A. Yess, sir.

Q. Will you please state, sir, all that occurred in regard to the Hesper being aground, and the agreement that you made for services that were rendered, the men that were paid, and all about it.

A. On the morning of the 12th of December I received a note from the captain of the Hesper, stating that he had run his vessel ashore down on the beach, and he requested me to get some assistance in the shape of tug-boats. We went down and could only find a couple of boats fit for the service, and we tried to get hold of the owners, but we could not find them. I saw Mr. Adone,
69 who, I believe, has charge of the Estell in the absence of the owners, Messrs. Irvine & B-is-ner, and he told me that the only one in port was the Estell, and he sent word around to the capt. of the Estell to come down; I think I asked Mr. Adone, though I am not positive on that point, but I think I asked him what charge he would make for the Estell, and he said he was not authorized to make any agreement; but I gave the capt. orders to proceed down to the ship and render all the assistance possible. I went and hired a crew and proceeded to the Hesper, and arrived at the life-saving station about half an hour before the vessel arrived. I got the crew at the life-saving station to help us; when I got on board I asked the capt. how this accident happened, and he said he was just going along slowly and he went aground. When the Estell got there I told the captain to sound all along to see where the deep water was in order to get our anchors out in that direction. The vessel put

two small anchors out and they towed on them, and the Estell pulled for about 2 or three hours, but without accomplishing anything material; when the Estell came up we sounded on her; it went inside of the Hesper and sounded about 11 feet of water alongside of the Hesper. I think the Hesper drew about 13.6 feet. On the outside there was about 13 feet. I told the capt. that I thought the vessel ought to tow, because there was no sea against her, and he said his crew were not fit for work; and he only had 8 men altogether
70 on the ship, and we thought we would ask the capt. of the Estell what he would take to pull the *the* ship off, or to attempt to do so, and he refused to make any bargain. He said I may pull her off and I may not pull her off, after I did make a price. I don't know what strength it requires anyhow he said, and I don't know how much labor it will take. He then commenced pulling us with the hawser; I think it was the ship's hawser that he got; and he pulled there for three or four hours, but the Estell was in the trough of the sea, and seeing we accomplished nothing, we finally told them to let go. About that time the Hesper was working somewhat in the sea too; we then wanted him to take our anchor out in case we could pull her ahead during the night, but he would not do this. Then I concluded I should go to town and get some more assistance. And that night the Estell started back, but it was so foggy that we had to anchor off the bar, and came into town next day. The only assistance that we could get was the Buckthorn. I thought it would be better to hire some men for our account, and let them do what we choose, rather than hire them for any certain agreement, for it would cost more if I took them for one special thing, and wanted them to do something else. We took this tug Buckthorn with the heaviest anchor we could get in town, with 65 fathoms of chains and blocks, and one thing or the other, and took provisions out there for a week. When we got down there with the Buckthorn at night it was so foggy
71 that we did not know where she was; we got the provisions aboard, and then we carried out the anchor in about an angle of 45° from her head towards the deepest water we could find; we dropped the anchor in about eighteen or twenty feet of water, and took the hawsers of the vessel, and the chains, which were 65 fathoms; all told, making 210 fathoms; and we passed the end of the hawser over the jib on to the boat with the steam-winch; and then we transferred all the laborers that we had aboard of the Buckthorn onto the steamer and put them to work throwing salt overboard, and they threw overboard about 250 or 200 bags an hour, I suppose, and the water was then lowered some; alongside of us there were about 10½ or 11 feet very close to it; the Buckthorn pulled and we heaved on the hawser, but it was no use; along towards noon the Estell came along with the schooner Clark, and we got that schooner alongside of the steamer and discharged as much salt into her as possible; towards 4 o'clock, when it commenced to rise, and we had thrown out about one-third of the cargo, which we knew would lighten the ship and lessen the depth at least 6 inches; I then ordered the Buckthorn to go and take the hawser from the Hesper

and carry it out to the Estell; that she could not go down near to the ship, that it might strike; then they towed on the ship, and on the ship we heaved with the steam-winch on the anchor we had out; and we used the power of the screw, and we worked that
72 way until about seven or eight o'clock in the evening, when we got her off.

Q. How much hawser did the steamer have out?

A. The Buck*land* had the Hesper's hawser of 90 fathoms; the Estell had her own hawser attached to the Buckthorn; I judge about as many fathoms as the Hesper's.

Q. How much salt was discharged?

A. I don't know positively; about two or three thousand *bales;* about ⅓ of the cargo.

Q. What was the whole cargo?

A. About 900 tons.

Q. Will you state, Mr. Muller, the expenses that you paid for all this work; what you paid the laborers and what you paid for material that was used?

A. I can't state from memory.

(Counsel gives him a paper.)

For rope, etc., $627.60; provisions, etc., $129.30 & $32.00; lightering salt, $354.50; Geo. Clark, for lighterman services, $1,750.00. Total, $2,893.70.

Q. That is the expense?

A. Yes, sir, as well as my memory can tell.

Q. Those are the expenses paid by the ship?

A. Paid by me, as agent of the ship.

Q. That includes the payment of Clark's men and the schooner also?

A. Not for carrying the anchors back to Galveston, because the anchors belonged to *E*rvine & B-is-ner; since that they have *went* into court and have not been paid.

Q. This is all the services that were rendered you?

73 A. Yes, sir; all we knew of, except these other parties.

Q. Is the account for lightering the salt included in there?

A. Lightering salt by schooner, $354.50.

Cross-examination:

Q. How much salt was saved, Mr. Muller?

A. Well, the salt was not consigned to me, but I think two-thirds was saved, about 600 tons, because the schooner took some.

Q. What was the value of that that was saved?

A. It was worth about a dollar a bag, 11 bags to a ton.

Q. Have you had any experience with the sea, Mr. Muller; are you a sea-faring man?

A. I was to sea for 13 years.

Q. How long have you been in Galveston?

A. 13 years.

Q. The Hesper was lying nearly br-adside, was it?

A. The head was about two points off the beach.

Q. Suppose in that condition a strong blow from the east would have struck her, what effect would it have had upon her?

A. The probabilities are that she would have gone over on the beach.

Q. It would have been a very disastrous thing for her?

A. Yes, sir.

Q. You went down first by the beach?

A. Yes, sir; when the Estell came up.

Q. You returned afterwards on the Buckthorn?

A. Yes, sir.

74 Q. The services rendered by the Estell and Buckthorn were rendered at your request?

A. Yes, sir.

Q. I would ask you whether, in your opinion, it was possible to have gotten off that ship without the aid of these tugs. Suppose she had gone ahead on the screw, her head pointing as it was, could she have gotten off without aid?

A. As agent, I do not think I am a proper person to testify in that matter.

Q. I would rather have your opinion.

A. That is a thing I could not give you any positive knowledge on.

Q. I want your opinion as a seaman, as a sea-faring man.

A. Well, without an anchor or something to pull her by, without the anchor and tugs to steer her, why she could not have got off.

Q. Do you know what the depth of water was on the inside of the Hesper when the Buckthorn got to her; did you sound on the inside?

A. The second time we sounded with the boats and the Buckthorn; I think there was about ten and a half feet of water on the inside; I am not positive, though.

Q. And the vessel was drawing 13.6?

A. Alongside the ship the first time there was about a foot more water.

Q. So it had lost a foot of water?

A. Providing that the current had made a little back.

75 Q. There was a question asked a witness that was placed on the stand by your side a while ago as to whether they had ever had any experience in getting vessels off when aground, or made contracts, or anything of that sort. Have you ever had any experience in this line; did you ever make similar contracts?

A. Yes, sir; I have taken other vessels from the beach.

Q. Did you ever take the Australia off?

A. I was employed.

Q. Where was she on the beach?

A. Down on the island.

Q. Was she heavily loaded or lightly?

A. She had a very light cargo and she lightened that.

Q. What was the contract for to take that off?

A. It was between $50,000.00 and $60,000.00. It has never been ascertained within $5,000.00.

Re-examination:

Q. It was a large ship; she was much more valuable that the Hesper?

A. Yes, sir; worth about $200,000.00.

Q. The Hesper was worth about $100,000.00?

A. I don't know, sir.

Q. The Australia was a very large ship; where did they come from to take her off?

A. The bargain was made in New York.

Q. And they brought the vessel from New York around by Florida and New Orleans, all that round about way to get her here?

A. Yes, sir.

76 Q. The Australia was a ship of twice the value of this one?

A. She was a ship of about 2500 tons and the Hesper was about 1600 tons.

Q. She had very little, if any, cargo?

A. Yes, sir.

Q. This occurred in the storm of 1875?

A. Yes, sir.

Q. How long was she here on the beach before any one answered that advertisement?

A. She was here some time, because they had advertised all over the country; I think, she was here about two weeks before anybody came.

Q. Wasn't she here a longer time than that?

A. It was advertised in the New York papers to get her off?

Q. Do you know the occasion of her getting aground?

A. She drifted there.

Q. Was she drifting up with great violence?

A. She had let go her anchors and tried to get to sea, but being a light ship she came in ashore.

Q. Didn't the Australia go bow on?

A. Well, I don't know whether she went bow on or not, but they pulled her off by the stern.

Q. Isn't it much easier to get them off than one broadside on?

A. Oh, yes, of course; you have to swing the vessel around when it is broadside.

And the witness was then excused.

77 *Testimony of Capt. Robert Irvine, in behalf of Libellants, in Rebuttal.*

Capt. ERVINE testified in rebuttal as follows:

Q. Capt., you and Mr. Bisner were the owners of the Estell and Buckthorn?

A. Yes, sir; of late our agents, Messrs. Adone & Lobit, owned a portion of the Estell.

Q. What I want to find out is this: For what purpose are these boats; in what condition are they to do the business of towing and lightering; what purpose are they for?

A. For a general fire purpose; they have the best of fire apparatus.

Q. Have you apparatus for wrecking?

A. Yes, sir.

Q. Well, in what way are they fitted up; are they fitted up well?

A. They are fitted up for the business they do; we have tools of wrecking on them and fire apparatus, and then they are all fitted up more or less for tow-boats.

Q. What do you mean by tools for wrecking?

A. Anchors and chains and pulleys of different kinds.

Q. Do you keep a supply on hand?

A. Yes, sir.

Q. These vessels you speak of, are they fitted up for wrecking purposes?

A. I think as well as any company in the country; the tow-boats, barges, and lighters are better provided, I think, than any other lighter boat company in the country.

Q. You mean by that the U. S.

A. Yes, sir.

78 Cross-examination:

Q. What was the horse-power of the Buckthorn?

A. Well, sir, I don't really know the horse-power, what it amounts to in this country; we hardly ever measure the power of a ship that was; we can't tell what a horse-power is; one horse will pull as much again as some other horse.

Q. We know exactly what a horse-power means; so you don't know what their horse-power is?

A. No, sir; I don't.

Q. Can you approximate it?

A. I don't know the calculations to make to find out.

Q. So you don't know; you can't approximate; is the Buckthorne as much as 30 horse-power?

A. About 50, maybe; a mere supposition; it has a 22 or 24-in. cylinder; I find that some cylinders of steamships have not the same power; it depends upon the pressure of the steam.

Q. The Buckthorn is engaged as a lighter?

A. And towing also.

Q. She is fitted for towing?

A. A few years ago it was the only tow-boat we had in the harbor; we do towing with all these lighters; until the last few years we never had anything else to tow boats with except the lighters.

Q. Has the Buckthorn attached to her any of those fire apparatus, etc.?

79 A. She has fire-pumps on board all the time; it is very expensive, as we have to get new ones quite often; they are subject to heat all the time, and it destroys them very rapidly.

Q. You took them with you to the Hesper?

A. Yes, sir; in case of there being a fire on board; and then we have pumps which we keep in the warehouse to pump boats out when necessary.

Re-examination:

Q. You have anchors and chains?
A. We have them on the wharf.
Q. Ready to be used?
A. Yes, sir.

Cross-examination:

Q. Did you have any anchors on board of the Estell that night you went down?
A. No, sir; we don't carry these heavy anchors. These anchors weigh from 4,600 on.
Q. That is one reason why the Estell returned to get her anchors?
A. Yes, sir.

Re-examination:

Q. What was the size of that anchor of the Buckthorn?
A. The mark is wore off, but it looks like 46 or 47 hundred pounds.
Q. That was one of the anchors you had on your lots ready to be used for wrecking purposes?
80 A. Yes, sir; I think we had 3 or 4, some heavy and some light.

And the witness was then excused.

Testimony of Capt. Wilson, in behalf of Libellants, in Rebuttal.

Capt. WILSON, a witness in behalf of the plaintiff, being first duly sworn, testified in rebut-al as follows:

Q. What is your business?
A. Pilot, sir.
Q. Were you a pilot last December?
A. Yes, sir.
Q. Did you go down to the Hesper?
A. Yes, sir; I went down on the Estell the first trip she went down.
Q. Were you on the Estell all the time that night?
A. Yes, sir.
Q. What was the condition of the sea that night about half-past eight or nine o'clock.
A. Very rough, sir, about that time.
Q. Was it safe for the Estel to have gone to the Hesper and took off her anchor?
A. No, sir; not alongside of her; we went alongside of her in the afternoon, and I told the capt. I was a Galveston pilot, and offered my services if he needed them; he said the best thing he could do was to lay an anchor, and it was laid; then the Estell took the hawser and pulled at it about three hours from the stern, and then we moved the hawser forward to her bow, and we pulled there until it got so rough that they sung out to us to let go.
81 Q. Did you hear any request made to the capt. of the Estell to come and get an anchor?

A. Somebody said something about an anchor, but I could not hear very well; I was helping the men; it was too rough to get an anchor anyhow.

Q. It was too dangerous?

A. Yes, sir.

Q. You are not interested in the Estell?

A. No, sir.

Q. You are just a pilot?

A. Yes, sir.

Q. Did you go down again at any time?

A. No, sir.

Q. Did you sound around the Hesper?

A. I sounded when we got alongside of her in the afternoon; it was between 12 and 13 feet depth; when we got there it was high tide.

Q. Was the tide flowing when you got there; what time did it run out?

A. We could not tell, of course; but I knew from the way it was about in Galveston that it was high water when we got there.

Q. Do you know the Buckthorn?

A. Yes, sir; I know her well.

Q. What sort of a boat is she?

A. One of the best boats we had before the Estell came her-; I was on her 7 years.

Q. Is she a strong boat, well adapted to towing?

A. Yes, sir; for a while she towed everything that came over Galveston bar.

Q. You are a pilot on Galveston bar?

A. Yes, sir.

82 Cross-examination:

Q. Mr. Wilson, you stated that the sea was rough where you were out to the Hesper on the Estell; was there as storm blowing?

A. No storm; it was just a heavy sea; the breakers were breaking out about as far as Market street before we got to deep water.

Q. Was it a swell?

A. Regular sea.

Q. Any wind?

A. It was no strong wind.

Q. What direction was the wind blowing?

A. About southeast.

Q. How does that coast lie with the compass?

A. It lies about southwest and northeast, I think, sir.

Q. Which way was the bow of the steamer lying?

A. The bow was a little more on the beach than the stern.

Q. What direction was it accordind to the compass?

A. She laid about N. N. E., I think, sir; I didn't look at the compass.

And the witness was then excused.

Testimony of Capt. Wm. Andrews, in behalf of Libellants, in Rebuttal.

Capt. WM. ANDREWS, a witness in behalf of the plaintiff, being first duly sworn, testified in rebuttal as follows:

Q. What is your occupation?
A. I am a pilot on Galveston bar, sir.
Q. How long have you been engaged as a pilot?
83 A. About three years in July.
Q. What did you do previous to that time?
A. Just previous to that I was capt. of the Estell.
Q. You are familiar with the Estell?
A. Yes, sir; I ran her as a tow-boat for 12 mo.
Q. What kind of a boat is the Estell with reference to power, strength, build?
A. I consider her the best adapted and most powerful that has ever been in Galveston.
Q. You didn't go down to the Hesper yourself?
A. No, sir.

And the witness was then excused.

Testimony of Capt. Watterson, in behalf of Lib'l'ts, in Rebuttal.

Capt. WATTERSON, for plaintiff, testified in rebuttal as follows:

Q. You testified yesterday that when you went down with the Buckthorn you ran on the inside of the Hesper, until you made arrangements to begin towing; did you sound?
A. I did, sir.
Q. What depth of water did you find?
A. I was lying tight up to the Hesper's stern and on my inside, which is next to the beach, there was only 9 feet of water.
Q. Did you sound on the other side of the Hesper?
A. I did not.
Q. What day was *was* that?
A. That was the 3d—the 14th.

Cross-examination:

84 Q. How was the tide?
A. At that time it was low water, as far as I could judge.
Q. What hour was that?
A. It was in the forenoon.
Q. What time did you commence towing?
A. I commenced towing between two and three.
Q. What time did you get her off?
A. Somewheres about 5, before dark, just about dark when we let the tow rope go.
Q. It was high tide when you got her off?
A. I should judge high water.
Q. What was the state of the tide when the Estell went down?
A. I could not state positively.
Q. Approximate it as near as you can?

A. They got there about 5 o'clock; I should judge it would be ebbing by 7 o'clock.

Q. What time was the high tide?

A. I couldn't state for certain.

And the witness was then excused.

Endorsement on foregoing testimony taken at the hearing: "A. D. 551. Irvine & Beissner *v.* S. S. Hesper. Testimony. Filed Ap'l 4th, '83. Geo. C. Rives, clerk."

Respondent's testimony, taken before C. Dart, a commissioner of the circuit court of the United States, for the eastern district of Texas, at the clerk's office of the United States courts, in the city of
85 Galveston, on the 25th, 26th and 27th days of January, A. D. 1883, upon due notice, proctors for each party respectively being present, to wit:

Testimony of John Watson, in behalf of Respondent.

JOHN WATSON, sworn at the place aforesaid, on the 25th day of January, 1883, testified as follows:

I am a master mariner; am master of the Hesper—the steamship Hesper—and am about to go to sea; I came ashore on Tuesday morning, the 12th of December, 1882, about 4.45 a. m.; the Hesper was well found and manned in every respect; the engines were in a very good condition. She is an iron steamer—a propeller. At the time she struck her draft was about 13 feet 9; when she struck she was going at a rate of speed of about 4 or 5 knots. She did not strike with violence—just easily—came on the ground gradually. She remained upright after she struck; her position was not disarranged; when she first came on shore she did not come with sufficient violence to imbed her in the sand; when she first got fast she laid with her head N. E. by N. The sea was smooth, and there was no wind, but very little; after we got aground we run out 2 or 3 kedge anchors, out to seaward E. S. E.; we kept heaving on those anchors and trying to get her off with the engines; as to getting assistance, I sent a man to Galveston, to Mr. Müller, to send me assistance in the shape of a tug. The tug Estelle came down that night about 5 or
86 half past 5, just dusking; I spoke to the captain of that tug, and asked him what he would pull me off for, but he refused to make any agreement. We then gave the tug Estelle the tow-rope from the Hesper, from the after end of the ship—the after end was then more off the shore than the fore end. He kept towing on that after end until about 20 minutes past 9. We then ordered him to cease towing. He had accomplished nothing at all. I then asked him to run me an anchor out, but he said he wouldn't. I wanted the anchor out to keep me from going farther ashore, and also to heave on; I think he said he couldn't take the anchor out, because there was too much sea; as a matter of fact the sea was smooth, and he could have run the anchor out very easily. There was no valid reason for his refusing to take the anchor out that I am aware of. I

did not take notice of the wind, but there was very little wind all the time we were ashore. There was no swell or breakers where the steamship lay at that time. If that anchor had been run out as I requested we could have hove the ship off; the ship is provided with steam winches, steam windlasses; the crew was employed, also 4 or 5 men from the life-saving station on shore, at the time the Estelle was heaving on the tow-rope, in jettisoning a part of the cargo, consisting of salt; from 30 to 35 tons were thrown overboard; the weather that night was fine, and the sea was smooth. The tug Estelle did nothing that night; she went to town that night at
87 10 o'clock, for assistance, for more men to jettison the cargo, to lighten the ship.

The tug had rendered no assistance while she was there; she rendered assistance, but did not accomplish anything.

On Wednesday, the 13th of December, 1882, the sea was smooth, and there was no wind to speak of. In the morning, we commenced to rig all our gear, to fix stages, and make all ready to jettison the cargo, which took us until about noon; we spent the afternoon in shifting some of the anchors, and taking the hawsers, which were fast to those anchors, to the fore end of the ship; they had previously been at the after end; in this we were assisted by some of the men from the station; the sea was not too rough for boats to be out; I had two out, loaded with ropes and anchors in doing the work mentioned that afternoon. Neither the Buckthorne nor Estelle were there during the day. The ship was all alive about 10 o'clock that night, from 10 to 12, moving, and it wouldn't have taken much to get her off; when we felt her moving we hauled the ropes on the anchors taut, and it drew her head around in the direction of the anchors, and in the direction of deep water; it had the effect of leading her head off shore and in the direction of deep water. If the hawser and anchor had have been taken out by the Estelle, as requested by me, I could have hove her off. My reason for this is, that when
88 the captain of the Estelle refused to take the anchor out I put in 450 tons of water as ballast, and I could not get rid of this so easily; if he had taken the anchor out I would not have put in the water; I put in the water as ballast to keep the ship from going up further ashore. At 11 o'clock that night, after we had hauled the ropes taut, we moved the vessel's head from N. N. E. to E. by N. ½ N., and we left her in that position at that time of night.

At that time, if we had had the anchor out that I requested the Estelle to take out, we need not have put the water in, and we could have floated the ship off that night.

The Buckthorne came on Thursday morning, the 14th December, at about 12.30.

The ship's agent was present when the Estell was there the first time; think he came on horseback and went back with the Estell.

When the Buckthorne arrived she dropped her anchor in about 200 or 300 yards of us, and at about half-past six that morning she got underweigh, and lifted our two kedge anchors that were out, and then proceeded to seaward to about 18 feet of water, and there dropped an anchor which she had brought from Galveston; fast to

that anchor was 45 fathoms of chain, fast to the end of the chain. was a new 7½ or 8-inch hawser which the Buckthorne had brought from Galveston, which belonged to us, we had paid for it; fast to that chain was another hawser, which they got from the ship,
89 of the same size; fast to the two ends of those hawsers was the bight of a six-inch hawser, and the ends of the six-inch hawser were brought to our ship at the fore end, and we hove them taut with our steam winches and steam windlasses; this was all completed by about 8 o'clock a. m. of that day; the Buckthorne came alongside then and put on board of us about 25 or 27 men, which men were brought from Galveston under Mr. Muller's orders, and under my employment; these men had no connection with the Buckthorne or its crew; they had been employed by me to jettison the cargo; I could not say what Mr. Muller employed them for, but it was understood with Mr. Muller that he was to send men to jettison the cargo; the men worked under Mr. Clark's direction; I had charge of the ship. There was a little breeze—a moderate wind—that morning, I think, from the south. I could say it was calm. The sea was smooth. Those men came aboard, I guess, about 8 o'clock; then they had breakfast, at the expense of the steamship, and got to work on the cargo about 9 o'clock, and discharged about 120 tons that morning. In the meantime the Buckthorne was laying alongside doing nothing.

The Estelle came back about 10 o'clock a. m. on this day, Thursday, with a schooner in tow; the schooner was engaged by Mr. Muller for the ship, to save salt. After the schooner came
90 alongside the salt, instead of being thrown overboard, was placed on board the schooner; when the Estelle came she left the schooner about half a mile from the vessel, and it was about two hours before she was gotten up alongside; she came up alongside at about half-past 12 o'clock, and at one o'clock commenced to put cargo into her from one end of our ship, and during the time of that discharge our own crew was reserved for heaving on the ropes, and they had been doing this all the morning. I mean to say that after we commenced to discharge the salt into the schooner, it was only from one end of the ship, the schooner was not long enough to go the whole length of her, and from the other end the salt was thrown overboard. We began to show signs of coming off at 1 o'clock, caused by strains on the ropes and lightering the vessel; up to this time the Buckthorne and Estelle had not been towing on her. We called them at that time to give them our rope, but he was that badly manned that he had to get men to get a rope aboard; I mean the Buckthorne, he got men from the schooner, and some from discharging the salt to assist him in getting the rope on board; it took him about an hour to get that rope on board; and then after he got it on board he could not do anything towards towing the ship off. There was a current setting to the north, and his vessel went in the direction of the current, and he
91 hadn't power to get out of that position until the tug Estelle made fast to him and towed him out of it. The Estelle was then fast to the Buckthorne and the Buckthorne being fast to the

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91 hadn't power to get out of that position until the tug Estelle made fast to him and towed him out of it. The Estelle was then fast to the Buckthorne and the Buckthorne being fast to the

ship, and before they got into a proper position to tow on us it was about a quarter past 4 o'clock, when the Buckthorne was towing by herself, she did not have sufficient power to keep her head seaward, and her head was carried by the force of the current in a northerly direction, the effect to this to the steamship was to have a tendency to throw her broadside on, and I told him to stop towing or I would cast the rope from the ship; when I first told him to cease towing he did not cease, and that was the reason I told him I would cast the rope off if he didn't stop; I was heaving upon the anchor with my steam winches at the time. After the two steamers got into position to tow it was about half an hour before she came off.

As the conditions then existed the vessel could not have been gotten off without the assistance of my steam winches. I reckon there was more strain on my rope than there was on the tow rope. We contributed the most towards getting her off.

I do not think the Buckthorne and the Estelle has sufficient power at the time she was gotten off to have gotten her afloat by themselves. We were heaving on the ropes that were fast to the
92 anchor with our steam windlass, which, as I said before, always had a greater strain than the tow rope; when the two vessels were towing us we were going ahead, with our own engines at full speed, all the time that we were heaving on the ropes. At the time we came afloat the sea was smooth, and what little wind there was I believe was from the eastward. After we got afloat we hauled the tow line of the tug in on board of our ship. We were towed about 400 yards by the steamers. As soon as we found we were afloat we ceased towing.

From the time the ship went aground she drifted a little; I could not say how much, but perhaps about half of her own length, say, about 100 feet; but I do not think she did so much.

It was two or three hundred feet from where the vessel was to where the water was deep enough to float her as she stood with her cargo in without discharging any. As I have stated, at the time the vessel struck she was drawing about 13 feet 9. She had then in 920 tons of salt and about 150 tons of coal. The depth of water where the ship was stranded on the Thursday morning, the 14th, was about 10½ feet. When our vessel has no cargo in she is not drawing more than 7½ feet. After discharging about 350 tons the vessel had lightened about 20 inches, and to float her then she
93 would have to be pulled about 100 feet.

With the men we had the vessel could have been lightened by 9 o'clock that Thursday night so that she would have floated just exactly where she lay; there was no bad weather or rough sea up to 9 o'clock that night, but it was calm and foggy. My crew and myself stayed by my ship, and I kept and retained command of her. My ship was never in any immediate danger while she was aground. The tugs were in no more danger than in taking cotton out in the harbor; they were in no danger while there. There was no danger incurred by the officers and crew of either vessel while there; there was no danger to anybody. The Hesper sustained no injury; we had her bottom surveyed; there is no injury that we are aware of.

The "Hesper" came to Galveston, Friday morning, Dec'r 15th; she did not require any assistance in coming here; required no assistance whatever after she came afloat. I will state that when the tug Estelle came down on the evening of the 12th the head of the steamship fell in shore from N. E. by N. ½ N. to about N. by W.

If the anchor had been taken out by the tug as I requested I could have gotten the vessel off without the assistance of the tugs; we would have had to throw the cargo overboard, and it would have taken a little time, and I could have gotten her
94 off within the time she was gotten off.

JOHN WATSON.

And thereupon the direct examination of the witness John Watson by respondent being concluded, the examination was, by agreement of counsel, adjourned until to-morrow morning at 10 o'clock, when the said witness will be cross-examined by counsel for libellants, and re-examined by counsel for respondent, should said counsel so elect and the time be sufficient therefor.

Attest:

C. DANT,
Com'r of the Circ't C't U. S., E. D. T.

FRIDAY, *January 26th* 1883, 10 A. M.

Examination resumed pursuant to adjournment. Present: M. F. Mott and J. W. Terry, proctors for libellants, and John C. Walker, proctor for respondent, and the witness John Watson. And thereupon the said witness, being duly sworn, testified as follows:

Cross-examined by proctors for libellants:

The steamship Hesper was built in Hartlepool, England, in 1881. She is constructed of iron. Her registered tonnage is, gross, 1,654 tons, net, 1,069 tons. Her freight capacity is 1,950 tons. Her engines are 150 horse-power. I cannot tell what kind of boilers, am not an engineer. She has one boiler. She cost £22,080. I have followed the sea 22 years: I have commanded sailing vessels,
95 brigs. I am familiar with the different kind- of sailing vessels. The difference between a brigantine and a hermaphrodite brig is, a brigantine is rigged the same as a brig on the foremast, with fore and aft sails on the main-mast; a hermaphrodite brig is rigged square from the lower masts up on both masts, and fore and aft sails on the lower masts. In our terms, in English terms, we have got both brigs and brigantines. A snow is a square-rigged brig, too, without any try-sail mast, the hanks of the try sail working round the main-mast. A snow has a small try-sail mast. I did not mean to say that a snow is without any try-sail mast.

In English commerce, I do not there is such a thing as a hermaphrodite brig. I have only seen one or two, and I think they were Norwegian.

I could not tell without referring to the log book how the steamship Hesper was heading when she struck the ground; on referring to the log now before me, I find the course we were steering was N.

W. by W. ½ W., but at the actual time that the ship came to the ground she was coming round on a port helm, and I presume her head would be about northward at the actual time of touching, but she did not stop answering her port helm until her head was N. E. by N.; the helm was put aport before she touched; it was done
96 because we saw the land; it was two or three hours after the ship touched before she became fast so that we couldn't move her; I am mistaken in this; in the afternoon of this day we did move her; we moved her a whole ship's length; we touched ground first at 5.45 in the morning; I sent to town for assistance about 10 o'clock in the morning; I sent one of the men from the life-saving station; he said he could go in on horseback; I sent to town because it was my duty to do so.

Question. Was it not because you could not get the ship off without assistance?

Answer. Oh, no.

Question. Could you have gotten the ship off without assistance?

Answer. In time I could.

Testimony in narrative form resumed:

I could have gotten the ship off without assistance in about the same time she was gotten off, perhaps a little longer; I was on watch when she first struck; I was the officer of the watch at that time; when she first struck we backed for a short while and then we went ahead again; after we had backed her, and went ahead again, she was heading about N. E. by N.; the reason we went ahead instead
of continued to back her was because her head was off shore;
97 she was heading when we sent to town for assistance N. E. by N. After we moved her that afternoon she was heading about N. E. She was on an even keel when she struck. When we moved her that afternoon we moved her head. She went aground about opposite to the life-saving station, on Galveston Island, southwest of Galveston, a little to the southward of the station. The coast where she struck I could not say exactly the course, but should say it was about N. N. E. and S. S. W. It was not after daylight when we first touched. It was just breaking day; I do not know that there was anything misled me in running ashore. I reckon the current drove me down to leeward of the position I was expecting to make that morning. I was expecting to make Galveston. The current sometimes sets *sometimes sets* one way, and sometimes another. Her head was about quartering on shore when she first struck. When her head was quartering on shore it was not practicable to get her off by backing, not with the speed she had on her, 4 or 5 knots an hour. I do not think it was possible to have gotten her off by backing, at any time after she first struck.

Question. If she had struck full head on, going at the rate of 4 knots an hour, with a wind and sea as it then was, could you
98 have gotten her off by backing?

Answer. I could, with running some of my own anchors out, and discharging part cargo.

Testimony in narrative form resumed:

I do not know what the character of the sand was where she struck. I think she was on the top of it most of the time. She might have been imbedded in it about six inches or a foot; she was drawing about 13 feet and a half, or 9, not more than 13 feet 9. When I sent to town for assistance there was 11 or 12 feet of water there; the last day she was ashore the depth of the water was about 10 feet to 10 feet and a half. I believe she would have stayed upright, but I gave her a slight list aport to assist in discharging the cargo. My reason for this is that she is a flat bottomed ship, and I believe she would have stayed upright had I not listed her slightly, or nearly upright. The crew of the vessel was 23 hands all told; the plane of the bottom where the vessel went ashore was a gradual slope, but the precise gradient of it I couldn't say. I could have gotten the vessel off without assistance by 9 o'clock on Thursday night, had I known the weather was going to keep so good. We had good weather all the time; I had apprehension that the weather might
99 become bad, was the reason I sent to town for assistance. It was one of our own anchors that the Estelle refused to take out; it was about half-past 9 at night that I requested the Estelle to take the anchor out; it was a 3,200 weight anchor; I had any amount of hawsers and chains on board to attach to that anchor, and with that anchor out, with my own steam-winches and windlasses I could have gotten her off on the next night, Wednesday night, not Tuesday night; if we had gotten her off that way it would have been by the assistance of the Estelle, by running the anchor out; it was good weather and smooth sea all day Wednesday; I think I could have put that anchor out myself on Wednesday, but was busy about other things; I would have put it out in this way: I would have carried it out between two boats; I did not do it, because, in the first place, I spent the morning in rigging gear to jettison cargo, and, having had the Estelle towing me the day before, I was momentarily expecting her back to resume work, and at three o'clock that afternoon we back- two kedge-anchors together, one of 1,700 weight and the other of about 1,200 weight, and ran them away—as a matter of fact they had been out, but we shifted them—
and by that time it was dark; we attached the hawser from
100 these anchors to the winch, and attempted to pull her right off that night; the two kedge-anchors together weighed about 3,000 weight, perhaps a little short; I should think those two anchors together would do as well as a single bow anchor of 3,200 weight; it is a matter of judgment; I would prefer the big anchor; I could not pull her off with the two kedge-anchors that Wednesday night, because I had 450 tons of water ballast in; she was too heavy; if I had not had that water ballast in I think I could have pulled her off that Wednesday night with the two kedge-anchors; after the Estelle left me on Tuesday night I put water ballast in, expecting her to return to my assistance.

Tuesday was clear weather; Tuesday night, I believe, was foggy; after the Estelle left, Wednesday, it was slightly hazy all day; we could see from our ship a distance of four or five miles; Wednesday

night was foggy; Thursday was slightly foggy in the morning, and hazy during the day; Thursday night was foggy; from 1 o'clock to 6 o'clock Tuesday morning was clear weather; I suppose it was a third of a mile from the shore where we struck, I think there was a little surf on the beach that morning; we heard the roaring of the surf, heard it just as the ship struck or immediately after the ship struck; the cargo of the steamship
101 was salt, 10,277 sacks, about 920 tons; think we jettisoned about 250 tons; we put aboard the schooner about 80 tons; we had remaining on board about 600 tons, which we discharged. As soon as the anchor was taken out by the Buckthorne, and the hawsers ends were aboard of our ship, we let the water ballast out; I could not say how much the anchor weighed which was carried down by the Buckthorne; I heard it weighed about 2 tons, but do not know of my own knowledge. The Buckthorne carried down some chain and an eight-inch hawser, too; the big eight-inch hawser and chain was attached to the anchor; the chain was attached to the anchor and the 8-inch hawser and another was attached to the chain; the two ends of these hawsers were attached to the bight of a six-inch hawser, which had also been brought down by the Buckthorne. All of these hawsers were paid for by the ship, but not the chain, that I am aware of. The two ends of the 6-inch hawser were taken, one to my steam windlass and the other to the winch; the steam windlass is on the top-gallant forecastle and the steam winch, to which we carried the rope, was forward of the foremast; this was called steam winch No. 1; this steam windlass and steam winch are about 20 feet apart, and both forward amidships; the tow
102 line that was attached to the Buckthorne was from the forepart of the ship, forward of the steam windlass and steam winch No. 1.

I suppose there were about 5 men came on the schooner; there might have been 6. I think there were either 25 or 27 men came down in the Buckthorne for us. It was about 2 o'clock in the day I think, that I called to the Buckthorne to take the tow. I could have pulled the vessel off that day without the assistance of the tugs. I called them to help me because they were down there and I wanted to make a surer job of it; as a matter of fact I did not call out, it was Mr. Müller called out, and I say I did because I had charge of the ship; Mr. Müller was my agent; the vessel was consigned to Vaughan & Co. by charter; the salt was consigned to different persons by bills of lading; when I sent to town for assistance on Tuesday morning I sent to Mr. Müller; I think it was about noon on Tuesday he came on board; I forget the exact time; he went to town on the Estelle Tuesday night; he came aboard again when the Buckthorne came alongside on Thursday morning; think he came from Galvestion to the ship in the Buckthorne; think he left the ship about 6 o'clock that night again; think he went back in the Estelle.

The current was setting on Tuesday when we got ashore about S. W. about 1½ knots; it changed again at night and ran
103 north; it did not continue to run north from that time until

we got off, but changed, and was running in different ways at different times.

I did not reach the outer roadstead until Friday morning at 11 o'clock. I brought my ship up that night after getting off shore. I brought her up because it was foggy and I had some work to do that I could not very well do in Galveston roads. I had to drop an anchor on the ground from aft and take it in at the fore end, and the reason was I could do it much more easily there than anywhere else.

JOHN WATSON.

Re-examined by proctors for respondent:

We were ready, that is, the steamship Hesper was ready, for sailing last night, Jan'y 25th, 1883. She obtained her clearance papers on January 24th, 1883; there is nothing detaining me here except this suit; the ship is fully manned and equipped and ready for sea. When I say that I am ready for sea, I mean I had shipped last night all my cargo, except one bale of cotton, and I would not have stopped my ship for one bale; this one was shipped this morning.

My ship is worth per day £40. In my charter the demurrage of my ship for this voyage is £41 7*s.* per day.

JOHN WATSON.

Testimony of Trueman Moorsom, in behalf of Respondent.

104 And thereupon, the examination of the witness John Watson being concluded, on the same day, to wit, on Friday, the 26th day of January, 1883, the respondent introduced, as a witness, Trueman Moorsom, aged 33 years; and the said Trueman Moorsom, being duly sworn, testified as follows:

Examination-in-chief on behalf of respondent:

My home is in West Hartlepool, county of Durham, England. My occupation is seaman, and have followed it 21 years. Am chief mate of the steamship Hesper. I was chief mate the morning she grounded on Galveston beach, and was on board at the time. At the time she grounded she was eased—she was slow. She did not strike violently. We did not know she was ashore until she eased herself. She came ashore on an even keel. When she came ashore she laid on top of the sand, she did not imbed herself in it. The tide was well on to low water when she came on shore; there is very little rise and fall of the tide; about 6 inches, I believe. We tried to see at first if we could get her head around with the engines, and then we run three anchors out—kedges—the anchors had the effect of keeping her from getting further in. The Estelle got there about six o'clock that night—just at dusk she came.

105 From the time we grounded until she came, there was a very light wind, and the sea was smooth, a very slight ripple where we were; the weather continued fine that night, the sea was smooth. The Estelle towed us that night until about 10 o'clock. She accomplished nothing by towing; did not do any

good. We asked the Estelle to take an anchor out for us, but he said he couldn't; he reckoned there was too much swell to run an anchor out. That was his excuse. There was not sufficient swell to hinder running the anchor out. If we had had the boat we could have run the anchor out ourselves. At the time we asked him to do it there was nothing to prevent the Estelle lying alongside the steamship to take the anchor on board. We had an anchor all ready to put on board of her; we had a hawser ready to bend on the anchor; that anchor was a ton and a half, 3,000 weight. We wanted to get that anchor out so as to get the ship off, so that we could hove her off ourselves, by having the anchor out and have something to heave on, and lightening the ship we could have hove her off; that was all that we needed. Providing we had an anchor out and everything held on, the ropes held on, we could have got her off before the vessels returned from town. On account of not having that anchor out we had to put 450 tons of water ballast in to keep her fast where she was. We would not have put that water in if the
106 anchor had been out.

I suppose we discharged about 30 or 40 tons of salt that night at the time the Estelle was towing. The ship was all alive that night; she came a little more in with her stern. If we had not had the water ballast in and had had a big hawser out that night we might have got her off. The ship would be lightened a couple of inches, I suppose, by the discharge of 30 or 40 tons.

The Buckthorne came at 2 a. m. on Thursday. There had been discharged 250 tons, as well as I can guess, when the Buckthorne commenced to tow. The water ballast was not quite all discharged when the Buckthorne commenced towing; the bulk of it had been. We had shifted the anchors before the Buckthorne commenced towing so as to get a better hold. We had pulled the vessel's head off about 8 points before the Buckthorne came. The vessel was all alive before the Buckthorne came; she was all afloat; every time we heaved on the hawser she was dragging away. I did not notice how many inches she was lightened by the discharge of her cargo and water ballast. We had heaved on the rope until the anchor dredged before the Buckthorne came. The cause of the dredging was the anchor not being heavy enough.

The anchor we offered to the Estelle was the bow anchor, and if it had been taken out we could probably have gotten her off
107 that night. The Buckthorne run the anchor out about 8 o'clock in the morning. There was two lengths of chain to the anchor, about 30 or 50 fathoms; there were one 8-inch hawser & 1 5-inch hawser attached to the chain, and each of these ropes took around the windlass ends. We heaved on the anchor, and as the vessel moved we kept continually heaving and taking the rope in.

We gave the Buckthorne the tow, but he did not have men enough to get the rope on board; he had to get men from the life-saving station to help get the rope on board.

TRUEMAN MOORSOM.

And thereupon the hour for adjournment having arrived, and the

examination-in-chief of the witness Trueman Moorsom by respondent not being concluded, by agreement of counsel the examination was postponed until to-morrow at 10 o'clock, and an adjournment was had accordingly.

Attest: C. DART,
Com'r of the Circ't Court U. S., E. D. T.

SATURDAY, *Jan'y 27th*, 1883, 10 A. M.

Examination resumed pursuant to adjournment. Present: John C. Walker, proctor for respondents, & J. W. Terry, proctor for libellants, and the witness Trueman Moorsom; and the said witness having been duly sworn, thereupon the examination of the said
108 witness was resumed on behalf of respondent, and thereupon the said witness further testified as follows:

When he did get the rope on board, instead of towing the vessel out, his vessel drifted in, and he towed the ship's bow further in; this had the effect of pulling the ship further towards the land. The captain of the steamship told the captain of the Buckthorne that if he didn't stop pulling he would cut the hawser. The Estelle then came to the assistance of the Buckthorne, and straightened the Buckthorne off, towed her off, and then they both towed right ahead, a little on the starboard bow, until the ship floated. The anchor that we were heaving on was right ahead of the bow. We were heaving all the time the Buckthorne and Estelle were towing with the steam windlass. The lines from the tow-boats and the line that was attached to the anchor were nearly in the same direction. When the vessels were towing, the line that we were heaving on was the most taut. Our anchor did the most good, and our steam appliances, until the rope got short, and when the rope got short the vessel floated, and we let go the ropes and everything and went ahead with our propeller. It was about two hours after we started with the Buckthorne before the vessel got off. The Buckthorne and the Estelle did not have sufficient power to pull her off without our
109 assistance. It took the Estelle all the time to keep the Buckthorne straight. During the performance of this service there was a light wind from the S. W., and the sea was smooth. We had one of our men in a boat by himself sculling about, tending the ropes. There was no danger, none whatever, to the Buckthorne or Estelle, or any of their men in any of the work down there. There was no danger of loss of either of the vessels, or endangering the lives of any of their crew. Mr. Clark and his men assisted in lightering the cargo; they were employed, I think, by Mr. Muller, the ship's agent. The Buckthorne and Estelle had nothing to do with their employment, as far as I know; they were employed by the ship. On referring to the log of the ship now before me, I find that on Dec'r 12th the wind was W. S. W., with fine weather, a moderate breeze. On the 13th, the wind was light breeze S. W., and fine weather. On the 14th, light winds and hazy weather.

The sea during the whole time was smooth; a slight ripple; what we would call smooth—very smooth; all the time we were transporting backwards and forwards in our own little boats.

TRUEMAN MOORSOM.

Cross-examined by proctor for libellants:

I was aft when the ship grounded, just coming from the cabin; the steward called me about five minutes before, and told me
110 he thought the ship was aground; when I got on deck she was going ahead; the engines had been stopped; we were going very slow; I was in bed when the steward called me, just laying on the top of my bed, when the steward called me, and told me he thought the ship was aground; it was about an hour before the ship set fast; we tried to work her head around to get her off; the engines were working ahead all the time; they were working so as to get her out with her bow—they were not working all the time—when I first got on deck I do not know whether the engines were working ahead or astern; I did not notice; as soon as I got on deck we started to get the kedge out; the vessel was heading about N. N. E. or N. E. by N., or somewheres thereabout when I got on deck; I could tell by referring to the log; when she went ashore the vessel was heading not quite parallel with the shore, about a point inside; the captain was on the bridge at the time the ship struck; he was there when I went on deck, and I suppose he was at the time; he is not a man who would leave it; after the ship got fast we were in eleven feet and a half of water aft, and about 8 or 9 feet forward, I suppose; I had nothing to do with that; the 2d mate was to look after that; I couldn't tell you about the water; after the ship got fast she changed her position that night; her bow fell in towards the shore about 35 feet; the wind on Tuesday night was very slight, and just the same on Wednesday night; there might be a little bit more, but it was light winds; it took about two hours to run the water ballast in; we do not pump it in; we open
111 the cocks, and it runs in itself; the water ballast was put in
112 after the Estelle stopped towing, about 10 o'clock Tuesday night.

Up to the time the Buckthorne got there there had been discharged 30 or 40 tons of cargo. It took about 6 hours to pump the water ballast out; we commenced when we commenced to discharge cargo, about 8 o'clock Thursday morning. I do not know the draft of the ship when she came ashore; we have burned 300 tons of coal, and I have not seen her draft since we left England; I should say her draft was about 12½ feet aft; after we put the water ballast in her draft would have been about 14 feet aft. I do not know the scale of the ship and I could not say how much 450 tons of water ballast would weight the ship down; I cannot give any opinion as to how much that would put her down in the water. The reason I know that the Estelle could have carried the anchor out that night was that there was nothing to stop him. I do not know how much the anchor would have made the Estelle draw; probably not more than 6 inches difference, and she could have carried it either forward or aft; it would have made no difference in her draft, or very little. I do not know how much the Estelle draws; I know there was plenty of water all around the ship for her and she went all around the ship. It was about 2 o'clock Wednesday morn-
113 ing when the ship was all alive. I never sounded, and do

not know how much water we were in; there was more water around the ship or she would not have eased herself. She was never properly fast after 2 o'clock Wednesday morning; she was afloat, moving about. I, with the ship's men, were employed all day Wednesday in running anchors out and discharging cargo overboard. We could have carried that anchor out on Tuesday or Wednesday if we had a boat large enough; we did take it out 20 feet from the ship, but had to cut it loose, because it was about to sink one of the little boats. We could not have carried that anchor out with the means at our disposal. The anchors we did carry out weighed, the largest, 1,600 weight, and one about 800, and the other about 600 weight. We had the two largest anchors backed with the full length of a hawser, about 100 fathoms from anchor to anchor. The large anchor is 3,200 weight and the largest anchor out was only half as large; the two anchors together we had out were 2,400 weight. The Buckthorne took the large anchor out and connected with the ship about 8 o'clock Thursday morning. After the anchor was put out we were constantly heaving on it until we got off, all the time. At the time the Buckthorn first commenced to tow she towed the bow of the ship about 16 feet towards the shore. We were not heaving on the anchor when the Buckthorn was pulling us in shore. When the Buckthorne first got the line the anchor rope was ahead, and when he commenced pulling he had the anchor rope about 2 points off the bow. The large
114 anchor did not drag; I do not think it dragged any; our lines were from the starboard, and the Buckthorne's lines were from our port side; the Buckthorne's line was nearer in-shore; we stopped towing our line when we were giving the rope to the Buckthorne till he got ahead, so that he could get a pull on it; we we were all afloat and forward at the time, and we stopped heaving, because the Buckthorne was pulling us in, and we were afraid of breaking the hawsers; we had enough to do to heave on the ship without towing the Buckthorne in; when we were heaving on the anchor we used all the power we had; the hawsers we had on the anchor were eight-inch hawsers—two of them; all the way between the ship and the anchor an eight-inch hawser and a chain; there was a chain, I suppose, but I never saw it; the size of the hawser the Buckthorne was towing on was about 12 inches; I suppose—12 or 13 inches; at the time the Buckthorne commenced towing we did not let out rope, but stopped the windlass; we kept the rope taut.

TRUEMAN MOORSOM.

Re-examined by proctor for respondent:

When we put the water ballast in on Wednesday night it did not have the effect to embed her in the sand, but had the effect
115 to keep her fast on the top of the sand; her bottom was as flat as this table; she is a flat-bottomed vessel.

TRUEMAN MOORSOM.

Testimony of Edwin Henry Griffin, in behalf of Resp'd'nt.

And thereupon the examination of the said Trueman Moorsom being concluded, on the same day the respondent introduced Edwin Henry Griffin, aged 42 years; and the said witness, being duly sworn, testified as follows:

Examination-in-chief by proctor for respondent:

My occupation is that of a seaman, and have followed that occupation about 26 years; I hold a master's certificate; I am 2nd officer of the steamslrip Hesper, and was on board when she grounded on Tuesday morning, the 12th of December last; I could not tell when she grounded; she did not strike at all, merely stayed; during the whole time she was aground there were light winds and calm, and the sea smooth generally; when the Estelle came there that night she accomplished nothing; the captain asked the Estelle to take out an anchor—one of our bow anchors, I suppose; we had hawsers ready to bend on to it; he did not take it out; refused to take it out, or made some excuse; I could not tell what it was; I do not know of any reason why he should not have taken it out; the steamship was ready to put it on board the Estelle as soon as she came
116 alongside; we wanted that anchor out to heave her head off-shore if possible; at any rate to keep her from going farther in; we would have taken it to the windlass and have it taut; on Wednesday night the vessel was hove around five points to seaward; there was 10 feet and a half and 11 feet around the vessel on Thursday morning at eight o'clock in some places; we would not have let in the water ballast the night the Estelle left if we had had the anchor out, and we could probably have hove her off before morning; we lightered about 350 tons of cargo in all, and 450 tons of water ballast was pumped out, too.

The Buckthorne could not pick herself up when she commenced to tow, but was towing way to leeward; I heard the captain singing out to the man to tow more ahead, or he would cut the rope; at that time the effect of that towing was doing harm, injury.

When the Estelle and Buckthorne got in line the hawser from the anchor was taut; the ship had been moving by the heaving on the anchor before the Buckthorne & Estelle commenced towing together; the ship herself accomplished more after the Estelle & Buckthorne got in line; her engines were the most powerful.

The boats and crews were exposed to no danger during the whole time.

The distance was about a ship's length from where the
117 vessel was to where she floated.

E. H. GRIFFIN.

Cross-examined by proctor for libellants:

I was coming out to cast the lead from the bridge when the vessel went aground; I was on duty when we first discovered that the vessel was in shoal water; we had not touched the ground, to my knowledge, when we first knew we were in shoal water; the head

was about N. E. by N. when she struck the ground; I could not say how long it was after the ship touched the ground before she became fast; I went out in a boat to get an anchor away at once; when the vessel struck she was laying about parallel to the shore; I don't recollect now how much water I found when I first cast the lead; the ship was constantly on the lift and move one way and another; she never did get stuck, to say thoroughly fast; I do not know positively the cause of the ship going ashore at that place; I can't say with any degree of judgment how much water she was drawing; I cast the lead frequently between Tuesday and Thursday; I found about 11 feet on Wednesday; it would vary a little with the tide; I do not know what was the rise and fall of the tide; I have no idea how much 450 tons of water would sink the ship down if she was
118 in deep water; I don't know; I do not know exactly at what time she changed her position after she got aground; I was at work generally; of course the captain was looking at these things; she had changed her position in a small degree, but nothing that I took notice of until Thursday morning; I do not know how much the Estelle was drawing when she went down on Tuesday night; I do not know the weight of the large anchor or how much it would have weighted the Estelle down.

E. H. GRIFFIN.

Testimony of George William Hall, in behalf of Respondent.

And thereupon the examination of the said Edwin Henry Griffin being concluded, on the same day the respondents introduced as a witness George William Hall, aged 27 years; and the said witness being duly sworn, testified as follows:

Examination-in-chief on behalf of respondent:

I am a sea-going engineer, and have followed that business seven years; I am chief-engineer of the steamship Hesper; I was on board the morning she went aground; I did not know she was aground; the captain telegraphed to me to "stand by," and instantly it shifted to "easy;" I do not know if it was the captain, but it was some one on the bridge; I was in the engine-room at the time; the en-
119 gines went easy then for 4 or 5 minutes; when she was going easy she was going 25 or 30 revolutions a minute; I do not know how fast this would make the steamer go, but I think about three and a half knots; after the engines went easy about 4 minutes, I believe, the telegraph rung "full speed astern;" she was put on full speed astern for about ten minutes before I knew she was aground; I left the 2nd engineer there and said I would go up on deck and see what was the matter; when I got on deck I found that the ship was aground; the master said to me as he was coming off the bridge, the ship is aground; I did not feel it when she did go aground; if she had gone aground with any violence, if there had been any shock, I should have felt it. Her engines and propeller were in first-clas condition when she went aground; her machinery was not injured at all by the grounding, nothing hurt in connection with the engines and boiler; the engines were ready at all

times, night and day; steam kept on the main boiler all the time; when the engines did not require me I was on deck; I was on deck Wednesday night; between 11 & 12 o'clock on Wednesday night the master came to me and asked me to come and see if she wasn't afloat; I took the two firemen that were on watch along
120 with myself, and the firemen, the captain, and I took the rope to the winch, and hove on the rope that was attached to the anchor. After working for about an hour I went below again. The captain told me that she had moved off a little, but how many points it was I do not know. He took me to the compass, but I did not pay much attention to it. The captain then told me that that would do until further orders; the ship was moving, she was not stationary on the sand; otherwise we could not have got water into the ship's boiler, as the valves are on the bilge. I saw the Buckthorne and the Estelle when they were towing on the vessel; my engines were going full speed before the Buckthorne took hold; the ship was moving; I know this from the fact that the salt thrown overboard, alongside of the 3d hatch, was under the propeller, and the propeller was throwing it out; the vessel would then have moved about 80 feet; she had moved this far before the Buckthorne commenced towing; I also had a fire-bar, cast-iron, attached to a lead line abreast of the engine room, over the side. I put it there to see if the ship moved as we pumped the water ballast out, and I found that she was moving; the water ballast was nearly all out when the Buckthorne took hold of us and the Estelle; then went below and remained below until she came
121 off, keeping the engines going full speed all the time; I am quite certain that the ship moved about 80 feet before the Buckthorne commenced towing on her; it was not directly out to sea, but towards deep water; I saw the Buckthorne towing; when I saw her towing she was on the inside of us; I did not see more, as I went below, and did all I possibly could with our own engines. The power of the engines of the Hesper is 750 horse-power, the whole power of the engines was exerted on the propeller, but the power on the windlass I do not know, as I was not on deck.

G. W. HALL.

Cross-examination by proctor for libellants:

The Hesper has two boilers, one is for propelling the ship, and one for running the winches in discharging cargo. The speed of the ship before we got the order to go easy was 64 revolutions per minute, which would be about 8½ or 9 knots. There is a hatch on the ship further aft than the 3d hatch. I never saw them take any salt out of the last hatch. I was on deck when the Buckthorne first began to tow.

G. W. HALL.

Testimony of Walter Jamieson, in behalf of Respondent.

And thereupon the examination of the witness George William Hall being concluded, on the same day the respondent intro-

122 duced as a witness Walter Jamieson, aged 24 years; and the said witness, being duly sworn, testified as follows:

Examination-in-chief on behalf of respondent:

I am boatswain on the steamship Hesper; I was on the Hesper the morning she got ashore. I remained on board all the time. I recollect the Estelle towing there by herself; she did no good, a little. The master asked the master of the Estelle to take out the ship's anchor, but he refused to do so. I do not know of any reason why he shouldn't have taken it out; there was no sea; it was as smooth as it could be. She wasn't afloat I know that; sometimes she moved a little. I recollect on Thursday, when the Buckthorne commenced towing, the Buckthorne took the rope and towed more in towards shore at first. I did not see but the captain and one man on the Buckthorne; there may have been more, but I did not see. She had to get the life-boat men to help take on the rope. I do not think the Buckthorne did any good. I think the anchor and our own machinery did all the good that there was done. If the anchor had been put out the first night the Estelle was there we would have got the ship off.

WALTER JAMIESON.

Cross-examined by proctor for libellants:

123 Now and again the engine of the Hesper was going. When the Buckthorne was towing it was going all the time. We were afraid of breaking the rope. We had purchase enough on the machinery to break the rope. I could not say that the machinery of the ship was stopped when the Buckthorne first took on the line and commenced towing. As soon as we gave him the rope we commenced heaving again.

WALTER JAMIESON.

Testimony of Alfred Foster, in behalf of Respondent.

And thereupon the examination of the said Walter Jamieson being concluded, on the same day the respondent introduced as a witness Alfred Foster, aged 30 years; and the said witness, being duly sworn, testified as follows:

Examination-in-chief on behalf of respondent:

I am an able seaman; have followed the sea about 14 years. I am one of the crew of the Hesper, and am about to go to sea. All the officers and crew of the Hesper are about to go to sea. I was on board the Hesper the morning she went aground on Galveston Island. I saw the Estelle towing on her on Tuesday night. I do not think she accomplished anything towards getting her off. I heard the master of the steamer request the master of the Estelle to carry out his anchor. I do not know the reason he gave for not carrying it out. The sea was pretty smooth. There was very little wind. I did not see any reason why she shouldn't take
124 out the anchor as requested; there wasn't much sea on; the

vessel was lifting when we were discharging the salt; I think we could have got off if we had had the bow anchor out when the vessel began to lift; the vessel was on the lift before the Buckthorne took hold; she had drawed ahead by her own engines before the Buckthorne took hold; when the Buckthorne took the rope on board she was towing inside towards the shore; that was doing no good towards pulling the vessel off; she was towing her in shore; I heard a threat made about cutting the rope; the captain said he would cut the rope if he didn't tow out towards the sea; when the Buckthorne and the Estelle both got in line I think the steamship was doing the most; I think she had the most power; we did not have any bad wind or rough sea during the whole time we were aground; I was sculling around occasionally.

ALFRED FOSTER.

Cross-examined by proctor for libellants:

I do not think that we did cease heaving when we gave the Buckthorne the tow; when the Buckthorne commenced towing we were heaving on the anchor; I did not look to see which line was the tautest, the Buckthorne's or the Hesper's; when I say heaving, I mean heaving on the steam windlass.

ALFRED FOSTER.

And here closes the testimony as taken before the said C.
125 Dart, a commissioner of the circuit court, on the dates named, as appears by his certificate to the same; the said certificate further reciting that all of said witnesses are seafaring men, and are about to go to sea.

Opinion of Court. Filed April 21, 1883.

The definition of salvage by Mr. Associate Justice Story is as follows:

"Salvage is a compensation for the rescue of property from present, pressing, impending peril, and not for the rescue of it from possible future peril. It is a compensation for labor and services, for activity and enterprise, for courage and gallantry actually exercised, and not for the possible exercise of them, which, under other circumstances, might have been requisite. It is allowed because the property is saved, not because it might have been otherwise lost upon future contingencies. Subsequent peril and storms may enter as an ingredient into the case when they were proven to show the promptitude of the assistance and activity and sound judgment with which the business was conducted; but they can scarcely avail for any other purpose."

1st Sumner Rep., 216.

"Salvage is the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in rescuing such property from actual loss."

126 The Blackwell, 10 Wall. Rep., 12.

Remuneration for salvage services is awarded to the owners of vessels on account of the danger to which the service exposes their property and the risk which they run of loss in suffering their vessels to engage in such perilous undertakings.

Ib., 13.

"The ingredients of a salvage service are, first, enterprise in going out in tempestuous weather to assist in distress, risking their own lives to save their fellow-creatures and to rescue their property; second, the degree of danger and distress from which the property is released, as when in imminent peril; third, the degree of labor and skill of salvors; and, fourth, the value of the property saved. * * * Risk, enterprise, and disinterestedness are necessary characteristics of every salvage service. * * * When none of these requisites occur the service deserves little better than a mere remuneration for work and labor."

Desty's Ship and Ad., Sec. 313.

In this case the steamship Hester, of the value of -100,000, having a cargo of salt, of the value of 5,000 dollars, drawing thirteen feet nine inches of water, grounded in the Gulf, near Galveston, on the 12 Dec., 1883, in twelve feet water.

The consignee of the ship, in Galveston, on learning the accident, employed the tug-boat Estelle to go to the relief of the Hester.

127 On her arrival the captain of the Hester asked the capt. of the Estelle what he would charge to draw the Hester into deep water, to which the capt. of the Estelle replied, "I can't make any bargain, for I don't know how much labor and how long it will take me." The Hester was heading about N. E. and lying parallel with the nearest land of Galveston Island. There was a slight breeze blowing from the S. E. and the sea was somewhat smooth. Under the directions of the capt. of the Hester the Estelle began to pull at the stern of the Hester, and after tugging for some time, and without success, the hawser was shifted to the bow of the Hester and the Estelle employed still unsuccessfully for some time in endeavoring to move the ship.

The time thus employed was about four hours. The capt. of the Hester then requested the capt. of the Estelle to take one of the large anchors of the Hester out to sea, in order that he might use the engines of the Hester in pulling her into deep water, to which request the capt. of the Estelle replied that he could not do it, because it was dangerous; thereupon the Estelle left, it being about nine o'clock at night. At this time the wind had increased somewhat and the sea was somewhat rough. After the Estelle left

128 the capt. of the Hester carried out two kedge anchors attached by hawsers to the starboard bow, and by the engines of the Hester moved her bow two or three points to the east. This was about 10 o'clock at night and the sea was somewhat lively.

The Estelle drew eight feet eight inch-, and, as before stated, the water around the Hester was twelve feet deep, the wind blowing at right angles with the length of the Hester.

On the third day afterwards the Estelle and another tug, called

the Buckthorne, owned by the same parties that own the Estelle, came to the relief of the Hester. The Buckthorne arrived first, bringing about twenty-five men, having a schooner in tow, for the purpose of discharging and jettisoning a part of the cargo of the Hester, which consisted of salt.

The Hester brought a large anchor and cable, also a hawser belonging to the Hester, the anchor and cable being the property of the Estelle. The anchor was dropped at the distance of the length of cable and hawser, and used by the Hester's engines, and the two tugs in connection with the Hester in a very short time floated the ship.

The ship had jettisoned one-third of her cargo.

There is a discrepancy between the testimony of the witnesses on the part of plaintiff and defendant as to the strength of
129 the wind at the time the Estelle left the ship on the first night; and also, as to the roughness of the sea, as well as to the supposed danger that would be incurred by the Estelle in receiving a large anchor off the Hester.

It will be recollected that the Estelle drew eight feet eight inches, and the water was twelve feet deep on the leeward side of the Hester, and that the Hester was aground; therefore it may be questionable whether it would be dangerous or not for the Estelle to approach the Hester on the leeside and receive the large anchor.

There can be no doubt that if the Estelle had taken the anchor as requested by the capt. of the Hester, and thus enabled the engines of the Hester to act in conjunction with those of the Estelle, that the ships would have floated on the first night.

By the testimony of plaintiff the Estelle would some days make a profit of three hundred dollars per diem. Further it seems that after the Estelle parted from the Hester on the first night it was discovered that she was somewhat injured, as was supposed in her attempt to pull off the Hester. It further appears that at that season of the year the prevailing winds were from the S. E. and would have a tendency to drive the ship further ashore.

Such we believe to be the material facts in the case. The
130 first question that arises is, were the services performed by the tugs salvage or towage?

By the definitions heretofore given of salvage, incurring danger is one of the attributes of salvage.

The only possible danger on the part of the tugs was the reception of the anchor from the Hester on the first night; this danger, if it were such, was declined by the Estelle.

If, as is contended on the part of the plaintiffs, there was danger to the Hester by the apprehended storms, the greater was the obligation on the part of the Estelle to allow no delay in doing everything possible to relieve the Hester from her dangerous situation on the first night; but this she refused to do, because of the alleged danger.

The Estelle, therefore, on the first night did not perform any salvage service, for she did not incur any danger, and what is still more, she did not relieve the Hester from any impending danger, if any such there were.

On the arrival of the two tugs afterwards, there was no danger incurred and none apprehended, and if the services performed by the tugs could by any circumstances be called salvage services, it was salvage of the lowest degree, closely approximating a *quantum meruit*.

In the Blackwall case it is stated that the following circumstances are the main ingredients in determining the amount of re-
131 ward to be decreed for salvage service:

1. The labor expended by the salvors in rendering the salvage service.

2. The promptitude, skill, and energy displayed in rendering the service and saving the property.

3. The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed.

4. The risk incurred by the salvors in securing the property from the impending peril.

5. The value of the property saved.

6. The degree of danger from which the property was rescued.

Such are the words of the Supreme Court of the United States, and we are bound by them.

As relates to the first ingredient, "The labor expended by the salvors in rendering the salvage service," the labor was evidently light.

Of the 2nd, "The promptitude, skill, and energy displayed in rendering the service and saving the property" are not very apparent, when we take into consideration that after the labor of 3 or 4 hours on the first day no services were performed until the third day.

As to the 4th ingredient, "The risk incurred by the salvors in securing the property from the impending peril," there was at the time no impending peril.

132 The value of the property rescued is in amount that in the Blackwell case.

In that case the danger from which the property was rescued was imminent, and there was certainly some risk incurred by the salvors in placing their ship beside a ship on fire.

In that case $10,000 were adjudged by the district court to be the amount of salvage on the vessel and cargo valued at $100,000. The supreme court affirmed the judgment.

In this case the value of the property rescued from circumstances of much less peril is said to be the same as that of the Blackwell. The greatest award possible could not exceed $10,000.

In consideration of the facts in this case in connection with those relating to the Blackwall, I have come to the conclusion, that had the Estelle complied with the request of the capt. of the Hester, and taken one of the Hester's anchors and planted it in such position that the Hester's engines could have been used in conjunction with those of the Estelle, and in so doing had relieved the Hester, that the Estelle would be entitled to the same amount of salvage that was in the case of the Blackwall, to wit, $10,000. But inasmuch as

this was not done, and thereby a portion of the cargo of the Hester was jettisoned, that the salvage should be less.

I therefore consider that the salvage in this case should be
133 $8,000; that *three* $3,000 of the same be awarded to the owners of the Estelle, and the same amount to the owners of the Buckthorne; and $2,000 be awarded to the schooner and the men employed to load the schooner and jettison the cargo.

It being understood that the claims of the schooner and the twenty-five men have been settled by the ship *Esther*, the two thousand dollars above decreed will recur to the owners of the ship.

AMOS MORRILL.

Endorsements: "A. D. 551. Irvine & Beissner *v.* Steamship Hesper. Opinion. Filed April 21, '83. Geo. C. Rives, clerk, by W. L. Hanscom, deputy."

Decree.

From the Minutes, March Term, April 21st, 1883.

Hon. Amos Morrill, judge, presiding.

IRVINE & BEISSNER
v.
STEAMSHIP "HESPER." } A. D. 551.

This day again came the parties to this suit by their proctors respectively, and the court having now duly considered the issues submitted on a former day of this term, to wit, on the 4th day of April, A. D. 1883, and being fully advised in reference thereto, upon due consideration thereof, it is considered and adjudged by the court that the libellants are entitled to compensation in the nature of salvage for the saving of the steamship Hesper and her cargo as alleged in their libel, the said compensation hereby allowed being as follows:

134 To the owners of the steam-tug Buckthorne, Robert Irvine and Charles L. Beissner, the sum of three thousand dollars. To Robert Irvine and Charles L. Beissner, owners of the steam-tug Estelle, the sum of three thousand dollars. To the owners of the schooner Mary E. Clark and the men employed to load the schooner and jettison the cargo, the sum of two thousand dollars, and it being understood by the court that the claims of the owners of the schooner Mary E. Clark and the twenty-five men employed to load the schooner and jettison the cargo have been settled by the steamship Hesper, the two thousand herein adjudged and decreed to the owners of the schooner Mary E. Clark and the twenty-five men will revert to the steamship Hesper.

And it appearing to the court that the property libelled, and upon which libellants had a lien for the payment of their said demands, has been taken out of the possession of the marshal, and out of the jurisdiction of the court by John Watson, master of the said steamship Hesper, on behalf of the owners thereof, George Horseley, as

claimant, upon stipulation duly executed, which remains in place of the property.

Wherefore it is further considered, adjudged, and decreed by the court that the libellants herein, Robert Irvine and Charles L. Beissner, have and recover from the said George Horseley, and of and from the sureties upon his said stipulation, George Ball and
135 George Sealy, the several sums hereinbefore allowed them respectively and have execution therefor.

Appeal Allowed.

To which rulings and decree of the court the libellants, by their proctors, except and give notice of appeal to the circuit court of the United States for the eastern district of Texas, which appeal is allowed, and to be perfected on libellants' entering into bond in the sum of five hundred dollars, conditioned according to law. Such bond to be approved by the clerk of this court, and to be filed within thirty days from this date; and the respondents also gave notice of appeal, which is allowed on the same terms and conditions, as is herein prescribed as to the libellants.

Libellants' Stipulation on Appeal. Filed May 10th, 1883.

In the District Court of the United States for the Eastern District of Texas. In Admiralty.

ROBERT IRVINE & CHARLES L. BEISSNER, Libellants,
vs.
STEAMSHIP "HESPER" & CARGO. } No. 551.

Whereas an appeal has been taken from the decree of this court, made on the 21st day of April, 1883, in the above-entitled and numbered cause, wherein Robert Irvine and Charles L. Beissner, owners of the steam lighter Buckthorne and steam-tug Estelle of Galveston, for themselves and others interested, as salvors, are libellants, against the steamship "Hesper" and cargo, by which said decree the said libellants were awarded as owners of the steam-tug Buckthorne the sum of three thousand dollars, and as owners
136 of the steam-tug Estelle the sum of three thousand dollars, besides costs, to be recovered of and from the respondent and his sureties; and whereas this hon. court has fixed the appeal bond at five hundred dollars:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of five hundred dollars to pay all costs which shall be against the said Robert Irvine and Charles L. Beissner by the final decree rendered by the appellate court.

ROBERT IRVINE.
C. L. BEISSNER.
T. WM. ENGLISH.
T. H. SWEENEY.

Taken and acknowledged, this 10th day of May, 1883, before me.
GEO. C. RIVES,
Commissioner U. S. Circuit Court, E. D. T.

EASTERN DISTRICT OF TEXAS, *ss:*

T. Wm. English and T. H. Sweeney, parties of the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of five hundred ($500.00) dollars over and above all his just debts and liabilities.

T. W. ENGLISH.
T. H. SWEENEY.

Sworn to before me, this 10th day of May, 1883.

GEO. C. RIVES,
Commissioner U. S. Circ't Court, E. D. T.

Approved May 10, 1883.

GEO. C. RIVES,
Clerk U. S. Dist. Court, E. D. T., G.

137 Endorsements: "A. D. 551. Irvine & Beissner *v.* Steamship 'Hesper' & cargo. Libellants' stipulation on appeal. Filed May 10th, 1883. Geo. C. Rives, clerk."

In the District Court of the United States for the Eastern District of Texas, at Galveston, Texas.

I, Geo. C. Rives, clerk of the district court of the United States for the eastern district of Texas, at Galveston, in said district, do hereby certify the foregoing one hundred and thirty-seven (137) pages of writing to be a transcript of the record of the district court in the cause named at the beginning hereof, to wit: "Robert Irvine & Charles L. Beissner *v.* Steamship 'Hesper' & Cargo," numbered 551 on the admiralty docket of said district court, made up pursuant to Rule 52 of the Rules of Practice in Admiralty of the Supreme Court of the United States, as the same now appears in my office.

To certify which, witness my hand and seal of said district court, at Galveston, in said district, this 17th day of June, A. D. 1883.

[SEAL.]

GEO. C. RIVES,
Clerk U. S. District Court, E. D. T., G.,
By W. L. HANSCOM, *Deputy.*

Endorsements on transcript: "No. 1248. On appeal. Irvine & Beissner *v.* Steamship 'Hesper' & cargo. Transcript on ap-
138 peal from the district court. Filed June 7th, 1883. C. Dart, clerk."

Depositions of Wm. A. Hutchings. Filed November 9, 1883.

In the Circuit Court of the United States for the Eastern District of Texas.

IRVINE & BEISSNER
v.
STEAMSHIP "HESPER" & CARGO. } No. 1248. On Appeal.

It is hereby agreed between the undersigned, proctors for the libellants and appellants and respondents, that the testimony of W.

A. Hutchings may be forthwith taken before C. Dart, a commissioner of the circuit court of said district; which testimony, when so taken, shall be returned by said commissioner into said court, and used as evidence in said cause.

The counsel for respondent waives formal notice of time and place of taking depositions of W. A. Hutchings, and appears at the examination.

Nov. 9th, 1883.

BALLINGER & MOTT,
Proctors for Libellants.
WAUL & WALKER,
Counsel for Resp't.

And thereupon the said witness, W. H. Hutchings, being present and being duly sworn, testified as follows:

Examination-in-chief on behalf of libellants and appellants:

139 My position last December was superintendent of the United States 8th life-saving district; which district embraced the coast of Texas, Louisiana, Mississippi, Alabama, and west coast of Florida.

I saw the steamship Galveston last December and was aboard of her. She was ashore opposite the life-saving station on the west end of Galveston island.

I was on board the Hesper when the steam-tug Estelle reached her, on the afternoon of the 12th. The Estelle arrived there about 4 or 5 o'clock. The water was smooth at that time—comparatively smooth—a small ground swell.

The swell began making about sunset, and somewheres about 8 or 9 o'clock there was quite a large swell on, from the southeast, making in towards shore. She struck heavier that night than any time I was aboard of her.

I know the Estelle. I know all the tug-boats in town. I should consider her a tug. She is an extraordinary long, narrow, deep boat, built for speed, I should suppose, more than anything else.

I have had an experience of 12 years on the sea—from a boy to chief officer of a ship.

I should think with such a swell running in at the time,
140 the night of the 12th, the position necessary to put the tug under the flare of the bow of the ship to receive the anchor, would certainly be attended with great danger to receive an anchor such as a steamer of that size could carry; the danger would have consisted in this: that a tug-boat, which is a small vessel, is effected by a sea or swell more materially than a larger vessel, and will rise and fall very rapidly, and the position of putting a vessel of this class in such a manner as to receive a large anchor would necessarily endanger the vessel herself by collision, or probably both vessels; the weight of a large anchor placed at extreme end or stern of a vessel of the class of the Estelle would materially deepen her draft at the end where it was placed, she having but very little bearings; she would have had to veer down, stern in, and slacken a

cable to get alongside; it would have been a practical impossibility to have laid alongside that night; the sea was so rough it would have smashed everything all to pieces.

I believe we could have got the anchor on the Estelle about the time she came down and before we began towing; the swell came on about dusk.

I was aboard of the Hesper the 12th, the 13th, and all of the 14th until she got afloat.

The night of the 12th was the roughest that we had; it
141 was the only time that she struck her bilges with any great force.

I have no interest in this suit.

I thought the suit was settled long ago.

WM. A. HUTCHINGS.

Cross-examined by proctor for respondents:

There were no waves while the vessel was aground large enough to break over the vessel; it would have taken considerable of a combing sea to have broken over a vessel which showed as much side out of water as the Hesper did.

The ship's boats were plying around during the afternoon of the 12th; also during the 13th; I was in the boats most of the time—the life-saving and ship's boats—underrunning kedge anchors, &c.

The night of the 12th was not too rough for a life-boat to be out, or for a ship's boat to be out, so as to endanger life; there is hardly any danger attending a boat of any dimensions unless there is a break of the sea.

The ship was not weighted down with water ballast the night of the 12th that I can remember until after 9 o'clock; the water had been previously pumped out; after 9 o'clock she thumped,
142 striking her bilges heavily, and we ceased throwing cargo overboard, and repumped the ballast tank full again to hold her steady.

There was a full ordinary tide that night. I went ashore about between half-past 10 & 11 in charge of the boat, at the steering oar. I had a very hard time when we got into breaking water; it was breaking quite heavily; our boat came very near broaching too. The breakers from the ship in shore, I should say, were probably 200 yards. Of course there was a heavier swell where the ship was and deeper water.

The effect of the Estelle going alongside—when I speak of going alongside I have reference to the windward side of the vessel—would, no doubt, in my mind — resulted in great damage to both vessels, and the Estelle could, and probably would, have sprung a leak and sunk. In addition to that, I wish to say that an attempt to have gone to leeward of the vessel, with the amount of water obtained inside of the Hesper, might have put the Estelle in the same position as the Hesper and might have stranded her. In the above I have reference to the night of the 12th.

WM. A. HUTCHINGS.

Attest:

C. DART, *Com'r.*

UNITED STATES OF AMERICA, } ss:
143 *Eastern District of Texas,* }

I, C. Dart, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth circuit, under and by virtue of the acts of Congress in that behalf made and provided, and qualified, under the laws of the United States, to take depositions for use in the courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary for the libellants in the cause in the caption of the said deposition named.

I further certify that notification of the time and place of taking the said deposition was waived by respondent, in writing, the adverse party.

I further certify that on the 9th day of November, A. D. 1883, I was attended at the clerk's office of the United States courts aforesaid by M. F. Mott, proctor for libellants and appellants, and by John C. Walker, proctor for respondents, and the witness Wm. A. Hutchings, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the wit-
144 ness, and from his statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 9th day of November, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 108th.

[SEAL.] C. DART,
U. S. Commissioner, Eastern Dist. of Texas, at Galveston.

Endorsements: "No. 1248. On appeal. Publication made Nov. 10, '83, by agreement of counsel, endorsed on the envelope. C. Dart, clerk. Filed Nov. 10, '83. C. Dart, clerk."

Endorsements on envelope: "No. 1248. On appeal. Irvine &
Beissner *v.* Steamship 'Hesper.' Deposition of Wm. A.
145 Hutchings. Filed Nov'r 9th, 1883. C. Dart, clerk, by W. L. Hanscom, dep. Received this package of depositions from the hands of C. Dart, a commissioner of the circuit court of the U. S. for the eastern district of Texas, the officer before whom the same were taken, this 9th day of Nov'r, 1883. C. Dart, clerk, by W. L. Hanscom, dep. We consent that the within deposition may be forthwith published by the clerk. Nov. 10, '83. Waul & Walker.

Ballinger & Mott. Publication made Nov. 10, '83, by agreement of counsel, endorsed on the envelope. C. Dart, clerk. To the clerk of the circuit court of the U. S., east'n dist. of Texas, Galveston, Texas. C. Dart, com'r U. S. circ't court, E. D. T."

Order.

From Minutes, November Term, Nov. 10, '83.

Before Hon. Don A. Pardee, U. S. circuit judge.

IRVINE & BEISSNER, Libellants, Appellants, *vs.* STEAMSHIP "HESPER" AND CARGO. } 1248. On Appeal.

On this day came the parties to this suit, by their proctors respectively, and both parties announcing ready for a hearing, thereupon a hearing of the cause was had before the court, and the court having heard the pleadings, and the evidence and argument of counsel, the cause was submitted.

146 *Finding of the Court.*

From the Minutes, November Term, Nov. 13th, 1883.

United States Circuit Court, Eastern District of Texas.

IRVINE & BEISSNER, Libellants, *vs.* STEAMSHIP "HESPER."

In Admiralty. On Appeal.

This cause came on to be heard on the transcript and evidence, and was argued.

Whereupon, the court being advised of the evidence, finds the following as the facts of the case:

1st. That about 5.45 a. m. of the 12th day of December, A. D. 1882, the steamship Hesper, bound on a voyage from Liverpool to Galveston, being out of her course, run aground at the southwest side of Galveston Island about twenty miles southwest from Galveston, and nearly opposite the life-saving station.

The Hesper was an iron propeller and built in Hartlepool, England, in 1881, at a cost of twenty-two thousand pounds; her registered tonnage is, gross, 1,654 tons; net, 1,069 tons. Her freight-capacity is 1,950 tons. She has powerful engines of 750 horse-power, with steam windlasses and winches, and on said 12th Dec. was well found and well manned in every respect.

147 She was laden with a cargo of about 900 tons of salt.

2d. That when the Hesper went ashore her engines were slowed down and she was making about four knots per hour. She struck easily without shock and remained upright.

Her draft was then thirteen feet nine inches. The sea was smooth and there was very little wind; what there was was from the south, and the ship headed when she struck northeast by north.

Kedge-anchors were immediately put out to the east southeast,

and efforts made to get the ship off in that direction with the ship's engines heaving on those anchors.

At the same time a message was sent overland to Galveston, the nearest port to the ship's agent to send assistance.

3d. That the agent of the ship applied to the agent of the tug Estelle, and procured that tug to go to the assistance of the Hesper.

The "Estelle" was a long, narrow, deep boat, drawing about 8 feet 8 inches, and was the most powerful tow-boat in Galveston harbor, and had aboard the usual appliances of such boats.

The Estelle reached the Hesper about 5 p. m. of the 12th of December and reported.

The master of the Hesper endeavored to bargain with the master of the Estelle as to the cost of pulling the Hesper off, but the master of the Estelle refused to make any agreement, on the ground that he did not know how much labor and time it would take. A line
148 was then given the "Estelle" from the stern of the Hesper, which was then more off the shore than the bow, and the Estelle hauled on said line for about two hours, during which time the crew of the Hesper, with some four or five hands from the life station, were throwing over cargo. No appreciable result came from this towing of the Estelle, and she desisted on the orders of the master of the Hesper.

4th. That in the meantime the sea which had been smooth with very little swell, had become more turbulent, and there was a very decided increase in the ground swell from the southeast. Not so much, however, but that small boats were flying around the Hesper, and life-boats were running easily to and from shore.

At this time of stopping hauling by the Estelle, the master of the Hesper requested the Estelle to come alongside and run a heavy anchor out seaward from the Hesper, both to keep the Hesper from drifting further in and for the Hesper to heave on to pull herself off.

This the master of the Estelle refused to do, on the ground that there was too much sea on, and that he would thereby endanger his own boat, and thereupon the Estelle, taking aboard the Hesper's agent who had come over land, proceeded back to Galveston to procure more assistance. It was then found that the Estelle was
149 making some water from a leak caused by a defect in the staff of the stuffing box, which was not tight enough and was worked loose by the strain in hauling on the Hesper.

However, the Estelle proceeded that night (of the 12th) to Galveston bar, where she laid until morning, reaching Galveston wharves about noon of the 13th of December.

The Estelle lay at the wharves repairing until the morning of the 14th of December, when she took the schooner Clark, which had been engaged by the Hesper's agent to lighter cargo, in tow and towed her down to the Hesper.

5th. That on the 13th of December the ship Hesper was lively though still aground, shifting her position slightly, but not affecting her safety; some 450 tons of water having been pumped into her ballast tanks to put her down and keep her from going nearer in

shore, and her crew being engaged in throwing over cargo while waiting for assistance.

And on the same day the agent engaged the Buckthorne, a steam lighter, belonging to libellants, of lighter draft and power than the Estelle, to proceed to the Hesper, which she did, taking down a heavy anchor and cables, and two new hawsers (the latter purchased by the Hesper's agent), and a gang of men employed by the Hesper's agent to help lighter cargo and generally assist, and also
150 provisions and other necessaries, arriving in the night and laying by until morning.

6th. That on the morning of the 14th of December the position and condition of the Hesper was much the same as on the preceding day, the weather being calm and the sea smooth.

About nine o'clock in the morning the gang of men brought down by the Buckthorn, after breakfasting aboard the Hesper, commenced to jettison cargo, and the Buckthorn carried out seaward and dropped the heavy anchor brought down from Galveston in about 18 feet of water, connecting the same by hawsers and cables of about 210 fathoms in length with the steam-winch of the Hesper. The Buckthorn then also took a line from the Hesper and pulled on her while the machinery of the Hesper was heaving on the hawsers leading to the heavy anchors, but no relief was given. Towards noon on the 14th the Estelle arrived with the Clark in tow. The Clark was placed alongside of the Hesper, and cargo was transferred to her by the crew and the gang aforesaid. This lightering was kept up until about four o'clock in the afternoon, when about one-third of the cargo was removed, and nearly all the ballast water pumped out, and then the Estelle took a line from the Buckthorn, and a general effort was made by the Buckthorn, the
151 Estelle, and the Hesper's engines to get the Hesper off, which succeeded, whereupon the Hesper, which was uninjured, steamed to Galveston.

7th. Where the Hesper went aground, the slope of the ground seaward is gradual, and the bottom is sand.

8th. The prevailing and probable winds on that shore during the month of December are from the south and southeast, sometimes of great violence.

9th. During the three days the Hesper was aground there was no wind nor sea of any danger to ships, large or small, and the services rendered to the Hesper, aiding her to get safely off, were not attended with any hazard or danger or any circumstances unusual to the towage and lighterage business, as carried on in Galveston roads when the wind is moderate and the sea smooth.

10th. That the value of the Hesper, which was entirely uninjured by going ashore, was one hundred thousand dollars, and the val[ue] of her cargo saved was six thousand five hundred dollars. The value of libellants' two boats, the tug "Estelle" and the lighter "Buckthorn," was thirty-five thousand dollars.

11th. That the Hesper, when aground as aforesaid, was in a condition of peril and distress, hardly likely to be able to get out of danger by her own efforts even if the weather had been certain to

continue favorable for many days, and certain to be wrecked
152 if the weather should prove to be bad.

12th. That the services rendered the Hesper by libellants' boats, the Estelle and Buckthorn, were salvage services, but of the lowest grade, involving neither risk of property, peril of life or limb, nor unusual expense nor gallantry, courage, or heroism, and the same will be fully compensated by double compensation on the basis of towage and lighterage services.

13th. The Estelle was engaged in these services three days and one night, and the Buckthorn two days and one night. The outside earnings of either of these boats, with their appliances, is 300 dollars per day, which, allowing as much for night work, would make the sum of twenty-one hundred dollars compensation, and double compensation is the sum of forty-two hundred dollars.

And the court finds the following as conclusions of law:

1. The services rendered by the libellants' boats, the Estelle and the Buckthorn, and their respective masters and crews, were salvage services of the lowest grade.

2. That the court should award for said services the sum of forty-two hundred dollars.

3. That libellants should have judgement for the sum of forty-two hundred dollars and costs incurred in the district court.

4th. That the libellants should pay the costs of this court.

DON A. PARDEE,
Circuit Judge.

Decree.

153 In the Circuit court of the United States for the Eastern District of Texas. In Admiralty.

IRVINE & BEISSNER Libellants, Appellants,
vs.
STEAMSHIP "HESPER" & CARGO. } No. 1248. On Appeal.

Before Hon. Don A. Pardee, U. S. circuit judge.

This cause came on to be heard at this term upon the transcript of the record in this cause and proofs, the parties appearing by their counsel, respectively, and was argued by counsel; and thereupon, upon consideration thereof, and considering the facts and conclusions of law as found in this cause, it is considered, adjudged, and decreed by the court that the libellants herein, Robert Irvine and Charles L. Beissner, do have and recover of and from the claimant herein, George Horseley, and of and from the sureties upon his stipulation filed in this cause, George Ball and George Sealy, the sum of four thousand two hundred dollars ($4,200.00); also, all the costs incurred in this suit in the district court, and have execution therefor.

It is further considered, adjudged, and decreed by the court, that the claimant and respondent, George Horseley, have and recover from the libellants herein and the sureties upon their stipulation filed in this cause, T. Wm. English and F. H. Sweeney, all

154 the costs incurred in this suit in this court, and have execution therefor.

November 13, 1883. DON A. PARDEE,
Circuit Judge.

Endorsements: "No. 1248. On appeal. Irvine & Beissner *v.* Steamship "Hesper" & cargo. Decree. Filed Nov'r 13th, 1883. C. Dart, clerk.

Decree.

From Minutes, November Term, Nov'r 13, 1883.

In the Circuit Court of the United States for the Eastern District of Texas. In Admiralty.

IRVINE & BEISSNER, Libellants, Appellants,
vs.
STEAMSHIP "HESPER" & CARGO. } No. 1248. On Appeal.

Before Hon. Don. H. Pardee, U. S. circuit judge.

This cause came on to be heard at this term upon the transcript of the record in this cause and proofs, the parties appearing by their counsel respectively, and was argued by counsel, and thereupon, upon consideration thereof, and considering the facts and conclusions of law as found in this cause, it is considered, adjudged, and decreed by the court that the libellants herein, Robert Irvine and Charles L. Beissner, do have, and recover of and from the
155 claimant herein, George Horsely, and of and from the sureties upon his stipulation filed in this cause, George Ball and George Sealy, the sum of four thousand two hundred dollars ($4,200); also, all the costs incurred in this suit in the district court, and have execution therefor.

It is further considered, adjudged, and decreed by the court that the claimant and respondent, George Horsely, have and recover from the libellants herein, and the sureties upon their stipulation filed in this cause, T. Wm. English and T. H. Sweeney, all the costs incurred in this suit in this court, and have execution therefor.

November 13, 1883.

DON A. PARDEE,
Circuit Judge.

Allowance of Appeal. Filed Feb'y 12, 1884.

In Circuit Court of the United States for the 5th Circuit and Eastern District of Texas.

IRVINE & BEISSNER
vs.
STEAMSHIP HESPER & CARGO. } Ad. No. 1248.

To the Hon. Don A. Pardee, judge of the circuit court of the United States for the 5th circuit.

Robert Irvine and Charles L. Beissner, libellants in the above-

entitled and numbered cause, respectfully represent that judgment was rendered therein on the 13th day of November, 1883, in favor of libellants for forty-two hundred dollars. They show that
156 the value of the vessel and cargo as found by your honor was one hundred and six thousand five hundred dollars, and that they claimed one-fourth thereof as their compensation for salvage services rendered by them to said vessel and cargo.

The libellants, conceiving themselves aggrieved by said final decree, rendered in the circuit court as above stated, doth hereby appeal therefrom to the Supreme Court of the United States, and they pray that this appeal may be allowed and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to said Supreme Court.

BALLINGER, MOTT & TERRY,
Proctors for Libellants.

And now, on this 9th day of February, A. D. 1884, it is ordered that the appeal be allowed as prayed for, and the bond on appeal is fixed at five hundred dollars.

DON A. PARDEE, *Judge.*

Endorsements: "Ad. No. 1248. Irvine & Beissner *v.* Steamship Hesper and cargo. Allowance of appeal. Filed Feb'y 12th, 1884. C. Dart, clerk."

Citation on Appeal to Supreme Court. Issued March 1st, 1884.

The United States of America to George Horseley, claimant, and George Ball and George Sealy, the sureties upon his stipu-
157 lation, against all of whom judgment has been rendered in the cause hereinafter mentioned, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the eastern district of Texas, holding sessions at Galveston, wherein Robert Irvine and Charles L. Beissner, libellants and appellants, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the decree rendered against you, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] DON A. PARDEE.
Circuit Judge.

On this 22d day of March, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared H. H. Kirkpatrick, deputy U. S. marshal, east. dist. Texas, before me, the sub-

scriber, C. Dart, clerk U. S. circ't court, east'n dist. Texas, at
158 Galveston, and makes oath that he delivered a true copy of the within citation to T. N. Waul, proctor of record for George Horseley, and to George Sealy, each, in person, at Galveston, Texas, on the 6th day of March, 1884. George Ball, one of the defendants named, is dead.

H. H. KIRKPATRICK,
Deputy U. S. Marshal, Eastern Dist. Texas.

Sworn to and subscribed, the 22d March, A. D. 1884.
[SEAL.] C. DART,
U. S. Circ't Court, E. D. T., G.

Endorsements: "U. S. circuit court, eastern district of Texas. No. 1248. On appeal. Irvine & Beissner *v.* Steamship Hesper and cargo. Citation on appeal to supreme court. Returned & filed March 22, '84. C. Dart, clerk.

Bond for Costs on Appeal to the Supreme Court. Filed March 3d, 1884

Know all men by these presents, that we, Robert Irvine and Charles L. Beissner, as principals, and B. Adone and J. Lobit, as sureties, are held and firmly bound unto George Horseley, George Ball, and George Sealy in the full and just sum of five hundred ($500.00) [dollars], to be paid to the said George Horseley, George Ball, and George Sealy, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind our-
159 selves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this twenty-first day of February, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas, lately, at a regular term of the circuit court of the United States for the eastern district of Texas, holding sessions at Galveston, in a suit depending in said court between Robert Irvine and Charles L. Beissner, libellants and appellants, and the steamship Hesper and cargo, George Horseley, claimant and respondent, on appeal, a final decree was rendered against the said George Horseley, claimant, and the said George Ball and George Sealy, the sureties upon his stipulation, for the sum of $4,200.00, on the 13th day of Nov'r, 1883; and the said Robert Irvine and Charles L. Beissner, libellants and appellants, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said George Horseley, claimant, and the said George Ball and George Sealy, the sureties upon his said stipulation, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if
160 the said Robert Irvine and Charles L. Beissner shall prosecute their appeal to effect, and answer all costs if they fail to

make their plea good, then the above obligation to be void; else, to remain in full force and virtue.

ROBERT IRVINE. [L. S.]
C. L. BEISSNER. [L. S.]
B. ADONE. [L. S.]
J. LOBIT. [L. S.]

Sealed and delivered in the presence of—
[SEAL.] GEO. C. RIVES,
Commissioner U. S. Circuit Court, East'n District of Texas.

Approved by—
DON A. PARDEE, *Circuit Judge.*

I hereby certify that the sureties on the within bond are well known to me, and that, in my opinion, they are good and sufficient sureties for the amount named in said bond.

To certify which, witness my hand and seal of the circuit court of the United States for the eastern district of Texas, at Galveston, Feb'y 28th, 1884.

[SEAL.] C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Endorsements: U. S. circuit court, east'n dist. of Texas. No. 1248. On appeal. Irvine & Beissner, libellants, appellants, against The Steamship Hesper & cargo. Bond for costs on appeal to Supreme Court. Filed March 3d, 1884. C. Dart, clerk.

161 In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Galveston, Texas.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and of all the proceedings in the cause *in cause* No. 1248 on the appeal docket of said court, entitled Irvine & Beissner, libellants, appellants, *vs.* The Steamship "Hesper" and cargo, George Horseley, claimant, as the same now appears in my office.

To certify which, witness my hand and the seal of said court, at Galveston, in said district, this the 21st day of April, A. D. 1884.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.

162 The United States of America to George Horseley, claimant, and George Ball and George Sealy, the sureties upon his stipulation, against all of whom judgment has been rendered in the cause hereinafter mentioned, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the eastern district of Texas, holding sessions at Galveston, wherein

Robert Irvine and Char-es L. Beissner, libellants and appellants, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the decree rendered against you, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] DON A. PARDEE,
Circuit Judge.

163 On this 22d day of March, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared H. H. Kirkpatrick, deputy U. S. marshal, east. dist Texas, before me, the subscriber, C. Dart, clerk U. S. circ't court, east'n dist. Texas, at Galveston, and makes oath that he delivered a true copy of the within citation to T. N. Waul, proctor of record for George Horseley, and to George Sealy, each, in person, at Galveston, Texas, on the 6th day of March, 1884. George Ball, one of the defendants named, is dead.

H. H. KIRKPATRICK,
Deputy U. S. Marshal, Eastern Dist. Texas.

Sworn to and subscribed, the 22d March, A. D. 1884.

[SEAL.] C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

[Endorsed:] U. S. circuit court, eastern district of Texas. No. 1248. On appeal. Irvine & Beissner *vs.* Steamship Hesper and cargo. Citation on appeal to Supreme Court. Returned & filed March 22, '84. C. Dart, clerk.

Endorsed on cover: E. Texas C. C. U. S. No. 928. Robert Irvine and Charles L. Beissner, appellants, *vs.* The Steamship "Hesper" & cargo, George Horseley, claimant, (and George Ball and George Sealy, sureties.) Filed 13th September, 1884.

122-256

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 295.

ROBERT IRVINE AND CHARLES L. BEISSNER,
APPELLANTS,

vs.

THE STEAMSHIP "HESPER" AND OTHERS, APPELLEES.

BRIEF FOR APPELLANTS.

EPPA HUNTON,
Counsel for Appellants.

JUDD & DETWEILER, PRINTERS.

Robert Irvine and Charles L. Beissner, libellants and appellants, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the decree rendered against you, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] DON A. PARDEE,
Circuit Judge.

163 On this 22d day of March, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared H. H. Kirkpatrick, deputy U. S. marshal, east. dist Texas, before me, the subscriber, C. Dart, clerk U. S. circ't court, east'n dist. Texas, at Galveston, and makes oath that he delivered a true copy of the within citation to T. N. Waul, proctor of record for George Horsley, and to George Sealy, each, in person, at Galveston, Texas, on the 6th day of March, 1884. George Ball, one of the defendants named, is dead.

H. H. KIRKPATRICK,
Deputy U. S. Marshal, Eastern Dist. Texas.

Sworn to and subscribed, the 22d March, A. D. 1884.

[SEAL.] C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

[Endorsed:] U. S. circuit court, eastern district of Texas. No. 1218. On appeal. Irvine & Beissner *vs.* Steamship Hesper and cargo. Citation on appeal to Supreme Court. Returned & filed March 22, '84. C. Dart, clerk.

Endorsed on cover: E. Texas C. C. U. S. No. 928. Robert Irvine and Charles L. Beissner, appellants, *vs.* The Steamship "Hesper" & cargo, George Horsley, claimant, (and George Ball and George Sealy, sureties.) Filed 13th September, 1884.

122 256

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 295.

ROBERT IRVINE AND CHARLES L. BEISSNER,
APPELLANTS,

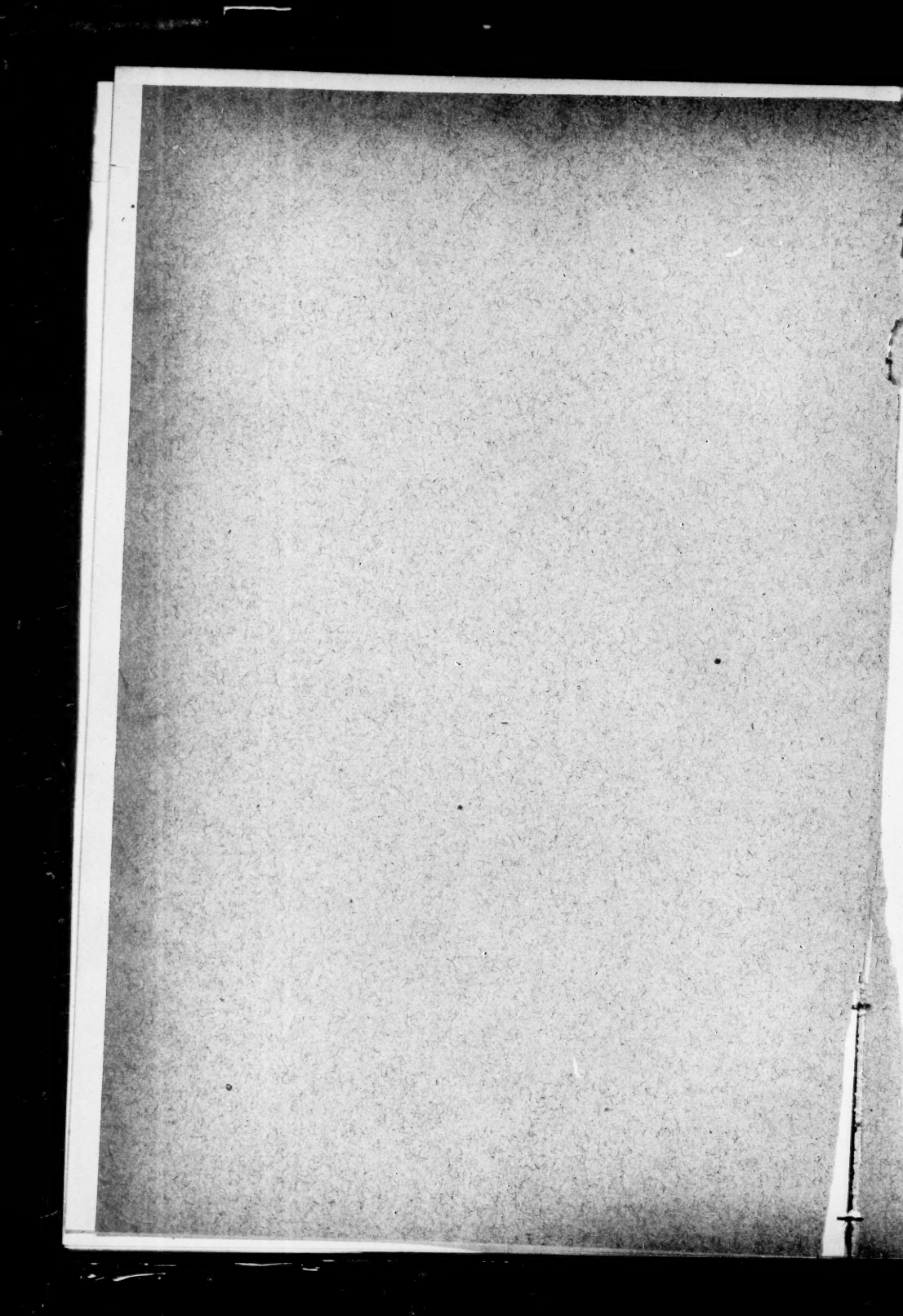
vs.

THE STEAMSHIP "HESPER" AND OTHERS, APPELLEES.

BRIEF FOR APPELLANTS.

EPPA HUNTON,
Counsel for Appellants.

JUDD & DETWEILER, PRINTERS.



Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 295.

ROBERT IRVINE AND CHARLES L. BEISSNER,
APPELLANTS,

vs.

THE STEAMSHIP "HESPER" AND OTHERS, APPELLEES.

BRIEF FOR APPELLANTS.

This proceeding was instituted by the appellants, as libellants, in the district court of the United States for the eastern district of Texas to recover salvage claimed by the libellants for services rendered by them as owners of the steam-lighter Buckthorne and the steam-tug Estelle, of Galveston, against the steamship Hesper, her tackle, apparel, engines, machinery, furniture, and cargo; said services of the said lighter and said steam-tug, their masters and crews, were rendered in saving the said steamship Hesper and her cargo on the 12th, 13th, and 14th days of December, 1882, which had run ashore on the coast of Galveston Island, near the west end thereof, about twenty-five miles from the city of Galveston, on the 11th day of December, 1882. They allege that the ship was driven with such violence on the shore that she was unable to extricate her-

self, and lay firmly imbedded in the sand, broadside on, nearly parallel with the beach, helpless and subject to the winds and waves; that tempestuous weather and high winds prevailed at that season of the year, and she lay in such a position that a strong blow from the east or southeast, which was to be apprehended at any time, would certainly have wrecked and destroyed her; that her condition was of imminent peril, and she was in danger of total loss, from which she was rescued by the steam-lighter Buckthorne and the steam-tug Estelle, belonging to the libellants; that but for the assistance of said lighter and steam-tug the steamship and her cargo would have been entirely destroyed.

Information that the Hesper was aground was sent to her agent in Galveston, and as soon as her perilous condition was known the libellants dispatched the Estelle to her aid, leaving Galveston about 1 o'clock on the 12th December, 1882, and arriving alongside of the steamship about 4.30 o'clock p. m. of that day. The Estelle immediately commenced operations to relieve the Hesper, and was unremittingly engaged with all her might for four hours, and, having been slightly injured, left (with ship's agent aboard) for Galveston for repairs, reaching there about 1 o'clock a. m. on the 13th of December.

That as soon as the Estelle reached Galveston, at request of agents of steamship, the libellants sent down their steam lighter Buckthorne, reaching the ship at 1.30 a. m. of the 14th December.

That the steam-tug Estelle, having repaired her damages, returned to the Hesper about 11 o'clock a. m. of the 14th December; that the said steamship jettisoned a part of her cargo; that by the united efforts of the lighter and steam-tug the steamship was, a little before 5 o'clock p. m., pulled off the ground and towed into four fathoms of water; that the steam lighter Buckthorne and the steam-tug Estelle were well manned and properly equipped, and rendered extremely valuable services to the Hesper and saved her from total

destruction; that the Hesper was worth $100,000, and that the value of the lighter was $15,000 and of the steam-tug was $20,000.

The respondent, George Horseley, the managing owner of the Hesper answered the libel, and complained that the Estelle refused, about 9 o'clock p. m. on the 12th December, 1882, to take on board an anchor from the Hesper, and that if this had been done the Estelle, with the assistance of the crew of the ship, the Hesper would have been floated.

They also aver that the Buckthorne and the Estella were not properly equipped, and without the aid of the ship would have failed to relieve her.

They say they are ready to pay reasonable compensation for services actually rendered, and deny that salvage service was rendered.

Evidence was taken on both sides, and on the 21st of April, 1883, the district court decreed to the libellant the sum of six thousand dollars. From this decree both parties appealed to the United States circuit court, which on 13th of November, 1883, reversed the district court, and allowed to libellants the sum of $4,200. From this decree of the circuit the libellants appealed to this court.

Assignment of Errors.

The court below erred in deciding:

1st. That the services rendered by the Buckthorne and the Estelle were salvage services of the lowest grade.

2d. That the court erred in decreeing to the libellants, the owners of the Buckthorne and the Estelle, the sum of $4,200, instead of one-fourth the value of the ship Hesper and her cargo, to wit, one fourth of $106,500.

The Hesper, when aground, was in a condition of peril and distress, not likely to be able to get out of danger by her own efforts, even if the weather had been certain to continue favorable for many days, and certain to be wrecked if the weather should prove to be bad (See 11th finding, page 72). the value of the ship Hesper and cargo was $106,500; the value of the salvage vessels, the Buckthorne and Estelle, was $15,000 and $20,000 respectively. The libellants, by the use of the Buckthorne and the Estelle, relieved the Hesper from her condition of peril and almost certain loss.

The Court must have erred in putting the sum for salvage at $4,200, which was not much more than one-twenty-fifth of the value of ship and cargo saved.

The Estelle was the most powerful tow-boat in Galveston harbor and had the usual appliances of such boats. The Buckthorne was a lighter tow-boat.

There were no storms or violent gales during the period that these salvage services were performed; but it is submitted that these services were rendered on a dangerous coast—dangerous because at that period of the year violent gales generally prevailed which would have driven the lighter and steam-tug on the shore, and greatly endangered their safety, if not wholly destroyed them. (See 8th finding and the evidence.)

That these services of salvage were rendered with skill and enterprise, and with a probable risk of lives and property.

Now, what is the definition of salvage service—not of the lowest, but of a very high grade?

Was the sum of $4,200 sufficient compensation for this salvage service?

The vessels used by the salvors were steam vessels.

Mr. Justice Clifford in "The Blackwall" (10 Wall., on page 13) says:

"Steam vessels are always considered as entitled to a liberal reward not only because the service is usually rendered by a costly instrumentality, but because the service is generally rendered with greater promptitude and is of a more effectual character."

This doctrine is approved in all the authorities.

Justice Clifford further says, on the same page (at the bottom):

"Courts of admiralty usually consider the following circumstances as the *main* ingredients in determining the amount of the reward to be decreed for salvage service:

"(1) The labor expended by the salvors in rendering salvage service.

"(2) The promptitude, skill, and energy displayed in rendering the service and saving the property.

"(3) The value of the property employed by the salvors and the danger to which it was exposed.

"(4) The risk incurred by the salvors in securing the property from impending peril.

"(5) The value of the property saved.

"(6) The degree of danger from which the property was rescued."

It will be found that every one of these circumstances formed ingredients in this case.

Labor expended.—The salvors had two powerful and costly steam vessels engaged two or three days, one of which was injured in this salvage service.

The promptitude, skill, and energy are apparent by the evidence and findings. The Estelle went to the rescue of the Hesper as soon as she was informed of her danger, and was followed by the Buckthorne as soon as it was apparent the Estelle needed further help.

The skill and energy are apparent from the success of the efforts; the value of the property employed by salvors was greater than in most cases—thirty-five thousand dollars.

The risk incurred:

This, as stated above, was the risk of wrecking the lighter and steam-tug, and the possible risk of life.

Risk of life is not a necessary ingredient, but it places the salvors in a higher position of merit and entitles them to a more liberal compensation.

Spencer *vs.* The Charles Avery, 1 Bond, 119.
The William Beckford, 3 C. Rob., 286.
The Emulous, 1 Sum., 214.

The value of the property saved:

This is found to be $106,500. (10th finding, page 72.)

The danger from which the property was rescued:

This, according to the 11th finding, was very great and involved the probable total loss of the ship.

It will be seen that all the ingredients for a liberal allowance existed in this case.

In the Blackwall; *supra:*

The ship was on fire in the harbor of San Francisco; the owners of the tug got up steam; took two fire-engines on board with firemen enough to work them, and lay alongside the burning ship, and in a little more than *half an hour* the flames were entirely extinguished. Decree for salvage for ten thousand dollars—one-half to the owners of the tug.

Now, compare this case of the Blackwall with the one under consideration. In the former, the time was half hour; in the latter, two days and nights; in the former, there was but one tug; in the latter a lighter and a tug; in the former, there was no danger; the only danger feared was the falling of the spars, which were supposed to be burning, but really were not; in the former but a small portion of the salvage service was performed by the libellants; in the latter the whole service was performed by libellants, except in jettisoning the cargo.

Judge Story in Tyson *vs.* Prior, 1 Gall. Report, 133, says:

"In general salvage ought not to be less than one-third, unless the property save be very valuable and the service very inconsiderable."

In the case of the ship Henry Eubank (1 Sum., 400), the Court says:

"In the distribution of salvage the owner of the salvor ship ought, under ordinary circumstances, to be allowed one-third of the salvage."

In Bearse *vs.* 340 Pigs of Copper (1 Story, 326,) the Court says:

"The maritime policy is to make a liberal allowanee for salvage—the highest compensation in most meritorious cases being one moiety."

In the case of Mason *vs.* The Ship Blaireau (2 Cranch, 240), Chief Justice Marshall lays down the doctrine of salvage with his usual force and clearness. He says:

"If we search for motives producing this apparent prodigality in rewarding services rendered at sea we shall find them in a liberal and enlarged policy. The allowance of a very ample compensation for those services (one very much exceeding the mere risk encountered and labor employed in effecting them) is intended as an inducement to render them, which is for the public interests and for the general interests of humanity to hold forth to those who navigate the ocean."

The doctrine laid down and established by these cases is taught in all the text books on maritime law.

In Desty's Shipping and Admiralty the doctrine of salvage and the rate of allowance is treated very clearly and all the authorities cited. See §§ 318, 319, and 320, and the authorities cited in the notes.

These authorities are very numerous and it will be seen

that in no case, having the circumstances of this case, has less been awarded as salvage than one-fourth.

The allowance for salvage is in the discretion of the court, but this is a legal discretion, regulated and governed by the law and the evidence. If this discretion is not properly exercised it is the duty of appellate courts to correct its improper exercise.

It is maintained that this discretion was not properly exercised by the circuit court for Texas.

That great injustice was done to the libellants.

That this small allowance of salvage will discourage the efforts of salvors, and break up what has been declared very important to commerce.

It is believed the decision of the court below is erroneous, and that the same should be reversed with directions to decree to the libellants one-fourth of the value of the ship and cargo saved.

Respectfully submitted,

EPPA HUNTON,

Counsel for Appellants.

122-256

Supreme Court U. S.
FILED.
APR 2 1887
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the U. S.

No. 295.

ROBERT IRVINE AND CHARLES L. REISNER,
APPELLANTS,

vs.

THE STEAMSHIP "HESPER" AND CARGO, GEORGE HORSELY, CLAIMANT, AND GEORGE BALL AND GEORGE SEALY, SURETEES.

JOHN H. THOMAS,
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This case originated in a libel in admiralty, for salvage services, filed by the appellants, owners of the steam-lighter "Buckthorn" and steam-tug "Estelle," against the steamship "Hesper" and her cargo. The libel alleges that, on the 11th of December, 1882, the "Hesper," bound on a voyage from Liverpool to Galveston, with a cargo of salt, worth about five thousand dollars, ran ashore, on the west coast of Galveston Island, about twenty-five miles from the city of Galveston; that the "Buckthorn" and "Estelle," with the assistance of the schooner "Mary E. Clark," which, at the request of the "Hesper," they towed from Galveston, to aid them, as a lighter, they succeeded in getting the "Hesper" afloat; that she then proceeded to Galveston, with the portion of her cargo which had not been

jettisoned; that the "Hesper" as saved, was worth one hundred thousand dollars, and the portion of her cargo which was saved, was worth about twenty-five hundred dollars. Pp. 9–10–11.

The answer denies that the services were as meritorious as alleged; and avers that the schooner "Mary E. Clark," with her crew, was chartered by the "Hesper," for said lighterage services. Pp. 12–13.

The appellee, Horsely, filed a claim for the "Hesper," and a stipulation for her, signed on his behalf and by the other appellees. No claim or stipulation seems to have been filed for the cargo. Pp. 6–7–8.

The District Court decreed to the libellants three thousand dollars, as owners of the "Buckthorn," and three thousand dollars, as owners of the "Estelle;" and also decreed to the owners of the "Mary E. Clark" and the men who were on board of her, none of whom were parties to the cause, two thousand dollars; and decreed that inasmuch as the claims of the owners and crew of the "Mary E. Clark" had been settled by the "Hesper," said sum of two thousand dollars should revert to the "Hesper." P. 64.

Both parties prayed and were allowed an appeal, and the libellants filed a bond for costs. P. 65.

No appeal bond seems to have been filed by the appellees; but their original stipulation, for fifty thousand dollars, was to pay any decree which might be rendered by an Appellate Court, and was answerable and sufficient for costs. P. 8.

The Circuit Court decreed, in favor of the libellant, for $4,200 and costs of the District Court; and in favor of the claimant, for the costs of the Circuit Court. Pp. 73–74.

The findings by the Circuit Court were as follows.

FINDINGS OF FACTS.

"1*st*. That about 5.45 a. m. of the 12th day of December, A. D. 1882, the steamship 'Hesper,' bound on a voyage from Liverpool to Galveston, being out of her course, ran aground at the southwest

side of Galveston Island, about twenty miles southwest from Galveston, and nearly opposite the life-saving station. The 'Hesper' was an iron propeller and built in Hartlepool, England, in 1881, at a cost of twenty-two thousand pounds; her registered tonnage is, gross, 1,654 tons; net, 1,069 tons. Her freight capacity is 1,950 tons. She has powerful engines of 750 horse-power, with steam windlasses and winches, and on said 12th of December, was well found and well manned, in every respect. She was laden with a cargo of about 900 tons of salt.

"2*nd*. That when the 'Hesper' went ashore, her engines were slowed down, and she was making about four knots per hour. She struck easily, without shock, and remained upright. Her draft was then thirteen feet, nine inches. The sea was smooth, and there was very little wind; what there was, was from the south, and the ship headed, when she struck, northeast by north. Kedge-anchors were immediately put out, to the east southeast, and efforts were made to get the ship off, in that direction, with the ship's engines heaving on those anchors. At the same time a message was sent overland to Galveston, the nearest port, to the ship's agent, to send assistance.

"3*rd*. That the agent of the ship applied to the agent of the tug 'Estelle,' and procured that tug to go to the assistance of the 'Hesper.'

"The 'Estelle' was a long, narrow, deep boat, drawing about 8 feet 8 inches, and was the most powerful tow-boat in Galveston harbor, and had aboard the usual appliances of such boats.

"The 'Estelle' reached the 'Hesper' about 5 p. m. of the 12th of December, and reported.

"The master of the 'Hesper' endeavored to bargain with the master of the 'Estelle,' as to the cost of pulling the 'Hesper' off, but the master of the 'Estelle' refused to make any agreement, on the ground that he did not know how much labor and time it would take. A line was then given the 'Estelle,' from the stern of the 'Hesper,' which was then more off the shore than the bow, and the 'Estelle' hauled on said line for about two hours, during which time the crew of the 'Hesper,' with some four or five hands from the life-

station, were throwing over cargo. No appreciable result came from this towing of the 'Estelle, and she desisted, on the orders of the master of the 'Hesper.'

"*4th.* That in the meantime the sea which had been smooth, with a very little swell, had become turbulent, and there was a very decided increase in the ground swell from the southeast. Not so much, however, but that small boats were plying around the 'Hesper,' and lifeboats were running easily to and from the shore.

"At this time of stopping hauling by the 'Estelle', the master of the 'Hesper' requested the 'Estelle' to come alongside and run a heavy anchor out seaward from the 'Hesper,' both to keep the 'Hesper' from drifting further in and for the 'Hesper' to heave on, to pull herself off.

"This the master of the 'Estelle' refused to do, on the ground that there was too much sea on, and that he would thereby endanger his own boat, and thereupon the 'Estelle,' taking aboard the Hesper's agent, who had come overland, proceeded back to Galveston to procure more assistance. It was found that the 'Estelle' was making some water, from a leak caused by a defect in the staff of the stuffing-box, which was not tight enough and was worked loose by the strain in hauling on the 'Hesper.'

"However, the 'Estelle' proceeded, that night (of the 12th) to Galveston Bar, where she laid until morning, reaching Galveston wharves about noon of the 13th of December. The 'Estelle' lay at the wharves, repairing, until the morning of the 14th of December, when she took the schooner 'Clark,' which had been engaged by the Hesper's agent, to lighter cargo, in tow, and towed her down to the 'Hesper.'

"*5th.* That on the 13th of December, the ship 'Hesper' was lively, though still aground, shifting her position slightly, but not affecting her safety, some 450 tons of water having been pumped into her ballast tanks, to put her down and keep her from going nearer in shore, and her crew being engaged in throwing over cargo while waiting for assistance. And on the same day the agent engaged the

'Buckthorn,' a steam lighter, belonging to the libellants, of lighter draft and power than the 'Estelle,' to proceed to the 'Hesper,' which she did, taking down a heavy anchor and cables, and two new hawsers (the latter purchased by the Hesper's agent) and a gang of men employed by the Hesper's agent to help lighter cargo and generally assist, and also provisions and other necessaries, arriving in the night and laying by until morning.

"*6th.* That on the morning of the 14th of December, the position and condition of the 'Hesper' was much the same as on the preceding day, the weather being calm and the sea smooth.

"About nine o'clock in the morning the gang of men brought down by the 'Buckthorn,' after breakfasting aboard the 'Hesper,' commenced to jettison cargo, and the 'Buckthorn' carried out seaward and dropped the heavy anchor brought down from Galveston in about eighteen feet of water, connecting the same by hawsers and cables of about 210 fathoms in length, with the steamwinch of the 'Hesper.' The 'Buckthorn' then also took a line from the 'Hesper' and pulled on her while the machinery of the 'Hesper' was heaving on the hawsers leading to the heavy anchors, but no relief was given. Towards noon on the 14th the 'Estelle' arrived with the 'Clark' in tow. The 'Clark' was placed alongside of the 'Hesper' and cargo was transferred to her by the crew and the gang aforesaid. The lightering was kept up until about four o'clock in the afternoon, when about one-third of the cargo was removed, and nearly all the ballast water pumped out, and then the 'Estelle' took a line from the Buckthorn and a general effort was made by the Buckthorn, the 'Estelle,' and the Hesper's engines to get the 'Hesper' off, which succeeded, whereupon the 'Hesper,' which was uninjured, steamed to Galveston.

"*7th.* Where the 'Hesper' went aground, the slope of the ground seaward is gradual, and the bottom is sand.

"*8th.* The prevailing and probable winds on that shore during the month of December, are from the south and southeast, sometimes of great violence.

"9*th*. During the three days the 'Hesper' was aground there was no wind or sea of any danger to ships, large or small, and the services rendered to the 'Hesper,' aiding her to get safely off, were not attended with any hazard or danger, or any circumstances unusual to the towage and lighterage business, as carried on in Galveston roads when the wind is moderate and the sea smooth.

"10*th*. That the value of the 'Hesper,' which was entirely uninjured by going ashore, was one hundred thousand dollars and the value of her cargo saved was six thousand five hundred dollars. The value of libellants' two boats, the tug 'Estelle' and the lighter 'Buckthorn,' was thirty-five thousand dollars.

"11*th*. That the 'Hesper,' when aground as aforesaid, was in a condition of peril and distress, hardly likely to be able to get out of danger by her own efforts, even if the weather had been certain to continue favorable for many days, and certain to be wrecked if the weather should prove to be bad.

"12*th*. That the services rendered by libellants' boats, the 'Estelle' and 'Buckthorn,' were salvage services, but of the lowest grade, involving neither risk of property, peril of life or limb, nor unusual expense nor gallantry, courage or heroism, and the same will be fully compensated by double compensation, on the basis of towage and lighterage services.

"13*th*. The 'Estelle' was engaged in these services three days and one night, and the 'Buckthorn' two days and one night. The outside earnings of either of these boats, with their appliances, is three hundred dollars per day, which allowing as much for night work, would make the sum twenty-one hundred dollars compensation, and double compensation is the sum of forty-two hundred dollars.

CONCLUSIONS OF LAW.

1. The services rendered by the libellants' boats, the "Estelle" and the "Buckthorn," and their respective masters and crews, were salvage services of the lowest grade.

2. That the Court should award for said services the sum of forty-two hundred dollars.

3. That the libellants should have judgment for the sum of forty-two hundred dollars and costs incurred in the District Court.

4. That the libellants should pay the costs of this Court.

POINTS.

1. The insertion of the testimony in the record was in violation of the rule of this Court.

Amendment to rule 8 of Supreme Court.

2. This Court will look only at the pleadings of the parties, and the findings of the Circuit Court; and will revise the decree appealed from, only for matters of law.

The Abbotsford, 98 U. S., 440.
The Clara, 102 U. S., 201.
The Benefactor, 102 U. S., 218.
The Francis Wright, 105 U. S., 381.
Sun Insurance Co. *v.* Ocean Insurance Co., 107 U. S., 485.
The Connemarara, 108 U. S., 359.

3. "The amount of salvage to be awarded, although stated by the Circuit Court as a question of law, is largely a matter of fact and discretion, which cannot be reduced to precise rules, but depends upon a consideration of all the circumstanees of each case."

"It is almost impossible that different minds, contemplating the same subject, should not form different conclusions as to the amount." Appellate Courts in this country and in Europe, have always been indisposed to disturb a decree for salvage, merely because they differed from the Court below as to the amount which ought to have been awarded.

"By the Act of Congress, 1875, chapter 77, the appellate power of this Court is restricted within narrow bounds; the authority to

revise any decree in admiralty of the Circuit Court is limited to questions of law; and the finding of facts by that Court is equivalent to a special verdict, or to facts found by that Court in an action at law when a jury trial is waived. The effect of this change may be illustrated by referring to the revisory power of the Courts in actions at law tried by a jury. The facts are decided by the jury in the first instance. If the jury return a general verdict, clearly against the weight of evidence, or assessing exorbitant damages, the Court in which the trial is had may set aside the verdict and order a new trial. But a Court of Error, to which the case is brought by bill of exceptions or appeal for matter of law only, cannot set aside the verdict, unless there is no evidence from which the conclusion of fact can be legally inferred. Before the Act of 1875, this Court, upon an appeal in a case of salvage, gave the same weight and no more, to the decree of the Court below, that a Court of Common Law would allow to the verdict of a jury; and might revise that decree for manifest error in matter of fact, even if no violation of the just principles which should govern the subject were shown. Since the Act of 1875, in cases of salvage, or in other admiralty cases, this Court may revise the decree appealed from, for matter of law, but for matter of law only; and should not alter the decree for the reason that the amount awarded appears to be too large "or too small, unless the excess" or insufficiency "is so great that upon any reasonable view of the facts found, the award cannot be justified by the rule of law applicable to the case."

The Connemarara, 108 U. S., 359–60.

4. Even if it were proper for this Court to look into the amount of the award, there is nothing in the facts found by the Circuit Court, to show that it was not ample and liberal.

The "Hesper" struck easily, without shock, and lay aground, within twenty miles of Galveston, her port of destination, with which she could and did communicate, by land, nearly opposite the life saving station, from which life boats come with assistance.

Both of the appellant's tugs were employed by her agent, and sent to her assistance. Their right to compensation was not, like that of ordinary salvors, contingent, on success. They were entitled to compensation, for the time and labor they might expend, whether their operations should be successful or otherwise.

The Sabine, 101 U. S., 390.
The Undaunted, 1 Lush., 90.
The Keller, L. R. 6 P. D., 97.
The H. B. Foster, 1 Abb., 234–5.

5. Their services "involved neither risk of property, peril of life or limb, nor unusual expense nor gallantry, courage or heroism. They were not attended with any hazard or danger, or any circumstances unusual to the towage or lighterage business, as carried on in Galveston roads, when the wind is moderate and the sea smooth."

9th and 12th findings.

When the wind was highest and the sea most heavy "small boats were plying around the 'Hesper,' and life-boats were running easily to and from the shore."

4th finding.

6. Being in the line of their ordinary business, within the limits of their ordinary operations, their right to compensation not being contingent, the Court would have been justified in awarding such compensation only as they ordinarily earned, in the length of time expended by them in rendering the services.

7. Even if their right to compensation had been contingent on success, a proper measure of award would have been the amount for which such service would probably have been undertaken, for compensation dependent on such contingency.

Ehrman *v.* The Swiftsure, 4 Fed. R., 467.
Baker *v.* Hemeney, 2 Lowell, 501.
The James T. Abbott, 2 Sprague, 101–3.
The Stetson, 1 Lowell, 119, 123.

The Court did allow twice as much as the tugs could have earned, if they had been working night and day. 13th Finding.

8. If the "Estelle" had taken out a heavy anchor, from the "Hesper," to seaward, for the latter to heave on, as she was asked to do, and might easily and safely have done, the "Hesper" would probably have got off the first day; have saved all of the time which was subsequently lost; and have saved the portion of her cargo, which was subsequently jettisoned. This neglect of a clear duty ought to be taken into consideration, and to reduce the compensation to which the libellants would, otherwise, have been entitled.

9. The award of $4,200 is 4⅕ per cent. of $100,000, the value of the "Hesper." The amount and per centage are, both, large, in comparison with the awards made by the best Admiralty Courts in this country and England, even to passenger and freight steamers, where human life, as well as property were saved, taking into account the duration and character of the services.

In the case of Brooks *v.* The Adirondack, 2 Fed. Rep., 387, the steamer was towed 662 miles; the time occupied was five days; the property saved was $300,000; the salvage allowed was $7,500, 2½ per cent., without costs.

In the Atlas Steamship Co. *v.* The Colon, 4 Fed. Rep., 469, 18 Blatchf., 277, the time occupied was six days, the property saved was $480,000; the allowance was $10,000, which was two and one-twelfth per cent., without costs, in either Court.

In the Emily B. Souders, 7 Ben., 550, the time occupied was eight hours. The District Court allowed $3,000, which was one-half of one per cent. on $600,000 of property saved. The Chief Justice reduced the amount to $1,000, which was one-sixth of one per cent.

In the Rebecca Clyde, 5 Ben., 88, 12 Blatchf., 403, the time lost was twenty-four hours. The Court allowed $800 for damage sustained, and $3,200 for salvage, which was three and five-ninths of $90,000, the property saved.

In Arnold *v.* Cowie, 4 L. R. P. C. 589, 2,000 pounds, about $10,000, was allowed to owners and crew of a large steamer, those of

a life boat and sixty or seventy extra men, for more than a week's perilous service, which resulted in saving twenty-nine lives, and property worth $270,000, being about three and two-thirds per cent. on the property saved.

10. The claimants, as well as the libellants, appealed to the Circuit Court. The accidental omission of the claimants to give an appeal bond ought not to be considered a failure to perfect their appeal. A bond for $500, given by the sureties who had been accepted as sufficient for the stipulation of $50,000, would have been a literal compliance with the condition on which their appeal was allowed. That stipulation bound them for the costs of the appeal. A new bond would not have enlarged their liability, nor have increased the security of the libellants. The failure to comply with so fruitless a technical condition, can hardly affect a substantial right.

11. Even if the claimants ought not to have been regarded as having perfected their appeal to the Circuit Court, the appeal of the libellants to that Court, opened and nullified the decree of the District Court. The Circuit Court, on appeals in admiralty, takes up the case *de novo*. It cannot, like other Appellate Courts, simply affirm or reverse the decree appealed from. It must render its own decree, as the whole testimony before it may render proper. There was no impropriety, therefore, in the Circuit Court decreeing for a smaller amount than that decreed for by the District Court.

The Lucille, 19 Wall., 73–4–5.

The Charles Morgan, 115 U. S., 75–6–7.

The Saratoga *v.* 488 Bales of Cotton, 1 Woods, 75–79.

The Hesper, 18 Fed. Rep., 696–99.

The Gallileo, 29 Fed. Rep., 538–9–40.

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